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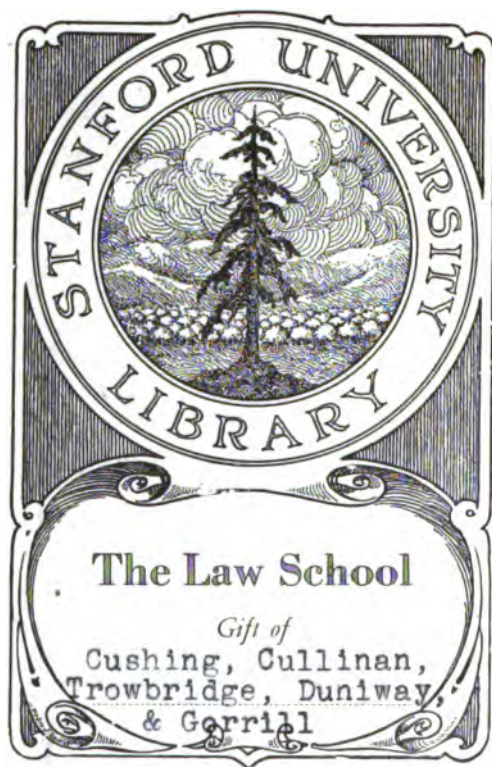
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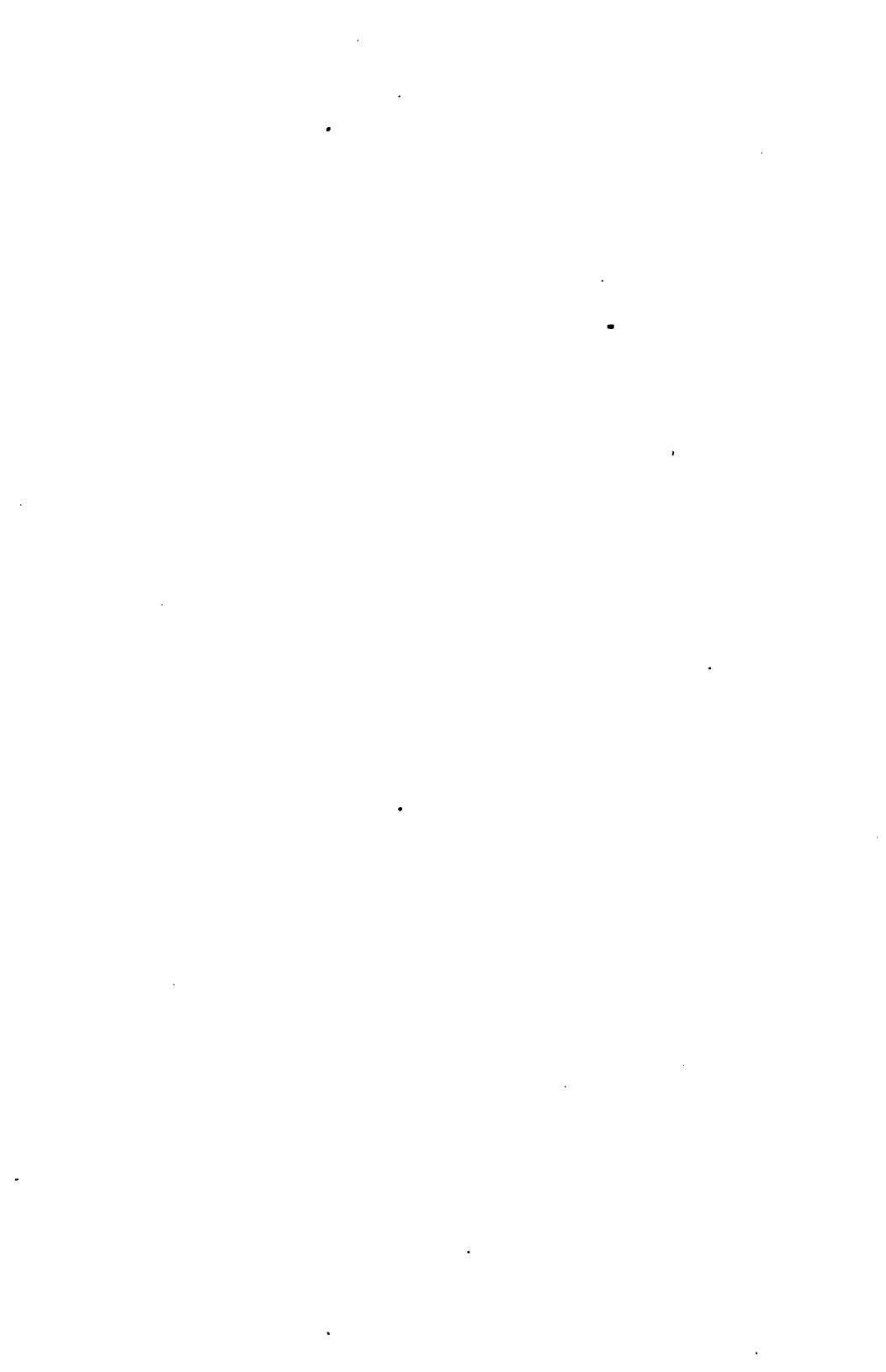
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THE NATIONAL BANK ACT

THE
NATIONAL BANK ACT

WITH ALL ITS AMENDMENTS
ANNOTATED AND EXPLAINED

BY

JOHN M. GOULD

JOINT AUTHOR OF "GOULD AND TUCKER'S NOTES
ON THE U. S. STATUTES"

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PREFACE

IN this work, the provisions of the National Bank Act of 1864 (Title 62 of the Revised Statutes of the United States) are fully reviewed, the amendments being inserted in their proper places, and the whole being annotated with all the decisions of the Courts, both Federal and State, to September, 1904, explaining or modifying the various provisions.

While the extensive and rapidly increasing business that has been carried on for forty years under this Act has in the main been developed with little friction or confusion, yet the numerous amendments made by Congress — some as late as 1903 — and the numerous important and interesting decisions still appearing in the reports, show that the subject even to-day is open to many doubts and possibilities of controversy, especially upon such points as Forfeitures for Charges of Usurious Interest, Power to Take and Hold Real Estate, and Mortgages thereof, as Security for Old or New Loans, Proper Limitations to Powers of Directors, Presidents and Cashiers, Ultra Vires, and the like.

Where there is any conflict of the decisions they are carefully compared, that it may be shown whither the weight of authority now tends, and altogether it is hoped that this work will be found of great practical service.

Boston, October 1, 1904.

TABLE OF CASES CITED

[The references are to the pages.]

A.		<i>Bain, Ex parte</i>	102, 115
<i>Abbott v. Bangor</i>	114, 136	<i>Balkam v. Woodstock Iron Co.</i>	47
<i>Aberdeen Bank v. Chehalis County</i>	128	<i>Ballard v. Burton</i>	176
<i>Adams v. Dannis</i>	85	<i>Bank v. Kennedy</i>	156, 163
<i>v. Nashville</i>	131	<i>v. Lanier</i>	29, 96
<i>Agnew v. United States</i>	108, 112	<i>Bank of Bethel v. Pahquioque Bank</i>	164, 168
<i>Alabama Ry. Co. v. Austin</i>	178	<i>Bank of Charlotte v. Exchange Bank</i>	95
<i>Albany City Nat. Bank v. Maher</i>	127, 140	<i>Bank of Clarion v. Brenneeman</i>	16
<i>Albion Nat. Bank v. Montgomery</i>	90	<i>Bank of Commerce v. New York City</i>	125
<i>Aldrich, Re</i>	65	<i>v. Seattle</i>	124
<i>v. Campbell</i>	42	<i>Bank of Jefferson v. Fore</i>	16
<i>v. McClaine</i>	42	<i>Bank of Lyons v. Ocean Bank</i>	19,
<i>v. Yates</i>	155		38, 42
<i>Allen v. Bank of Xenia</i>	85	<i>Bank of Memphis v. Kidd</i>	19
<i>American Surety Co. v. Pauly</i>	99,	<i>Bank of Montpelier v. Hubbard</i>	19
	155, 173	<i>Bank of Montreal v. Fidelity Nat. Bank</i>	180
<i>Anderson v. Philadelphia Warehouse Co.</i>	44	<i>Bank of North Bennington v. Bennington</i>	24
<i>Appeal of Second Nat. Bank of Titusville</i>	88	<i>Bank of Omaha v. Douglass County</i>	188
<i>Arizona Nat. Bank v. Long</i>	135	<i>Bank of Redemption v. Boston</i>	131,
<i>Armstrong v. Scott</i>	162, 167, 176		136
<i>v. Second Nat. Bank</i>	73	<i>Bank of Rochester v. Harris</i>	24
<i>v. Trautman</i>	156	<i>Bank of Uniontown v. Stauffer</i>	85, 86
<i>v. Warner</i>	168	<i>Bank of Waterloo v. Elmore</i>	20
<i>Aspinwall v. Butler</i>	84, 41, 99	<i>Barbour v. Bank</i>	82
<i>Atlantic Bank v. Harris</i>	58	<i>v. National Exchange Bank</i>	87
<i>Atlas Nat. Bank v. National Exchange Bank</i>	261	<i>Barnet v. Cincinnati Nat. Bank</i>	86
<i>Auburn Nat. Bank v. Lewis</i>	86	<i>Barrett v. Shelbyville Bank</i>	87
<i>Auburn Savings Bank v. Hayes</i>	168	<i>Batchelor v. United States</i>	112
<i>Austin v. Aldermen, The</i>	136	<i>Beal v. Essex Savings Bank</i>	81
<i>v. Boston</i>	136	<i>Beckham v. Shackelford</i>	154
<i>v. Tecumseh Nat. Bank</i>	53	<i>Bell v. Hanover Nat. Bank</i>	168
<i>Auten v. United States Nat. Bank</i>	22	<i>Bobo v. People's Nat. Bank</i>	89, 91
B.		<i>Boerner v. Traders' Nat. Bank</i>	89
<i>Bacon v. United States</i>	107, 108	<i>Bond v. Terrell Manuf. Co.</i>	25
<i>Bailey v. Mosher</i>	172	<i>v. Schneider</i>	178
<i>v. Sawyer</i>	45, 46	<i>Bonnet v. First Nat. Bank</i>	148
		<i>Bowdell v. Farmers', &c., Bank</i>	44
		<i>Bowden v. Johnson</i>	43, 45, 46
		<i>v. Morris</i>	46, 157
		<i>v. Santos</i>	43
		<i>Boyer's Appeal</i>	126

Boyer v. Boyer	125, 126	Chatham Bank v. Merchants' Bank	17
Braden's Estate	181	Chattahoochee Nat. Bank v. Schley	152
Bradley v. The People	185	Cheek v. Merchants' Nat. Bank	85
Brady v. Daly	47	Chemical Bank v. Hartford Deposit Co.	22, 154
Branch v. United States	51	Chemical National Bank v. Bailey	162, 169
Bressler v. Wayne County	130, 134	Chetwood, <i>In re</i>	146
Briggs v. Spaulding	23, 31, 38, 74, 93, 115, 173	v. California Nat. Bank	146
Brinckerhoff v. Bostwick	156, 172	Chipman v. McClellan	22
Brown v. Carbonate Bank	182	Church v. Ayer	42
v. Ellis	50	Citizens' Bank v. Dowd	176
v. Erie Nat. Bank	86	Citizens' Nat. Bank v. Donnell	91
v. Finn	41	v. Forman's Assignee	91
v. French	114	v. Gentry	90
v. Marine Nat. Bank	91	v. Great Western El. Co.	68
v. Marion Nat. Bank	89	v. Leming	85
v. Ohio Nat. Bank	95	City Nat. Bank v. Paducah	126, 127, 136, 138
v. Schleier	21, 27	v. Phelps	53
v. Second Nat. Bank of Erie	85	Claszen, <i>In re</i>	102
Buffalo German Ins. Co. v. Third Nat. Bank	179	Claszen v. United States	102
Bule v. Commissioners of Fayetteville	136	Clarion Nat. Bank v. Gruber	82, 86
Bullard v. Bank	2, 19, 30, 55, 96, 97	Clark v. Bever	32
Bundy v. Jackson	95, 96	v. Ogilvie	50
Burrows v. Smith	133	Cleveland Trust Co. v. Lander	133, 140
Burton v. Burley	162	Cochran and Sayre v. United States	108, 110
Bushnell v. Leland	42	Cockrill v. Abeles	35
Butler v. Eaton	42	v. Butler	172
		v. Cooper	93, 98, 178
C.		Coffey v. Bank of Missouri	53
Cadiz Bank v. Slemmons	86	Coffin v. United States	108
Cadle v. Baker	164	Cogswell v. Second Nat. Bank	86, 99, 180
v. Tracy	19, 20, 171	Colgin v. City Nat. Bank	89
Cake v. Lebanon Nat. Bank	86	Commercial Nat. Bank v. Chambers	126, 132, 133
California Bank v. Kennedy	21	v. First Nat. Bank	25
California Nat. Bank v. Ginty	84	v. Weinhard	99
v. Thomas	22, 98, 173	Commissioners of Morgan County v. First Nat. Bank	136
Camp v. First Nat. Bank	140	Commissioners of Silver Bow County v. Davis	124
Canfield v. State Bank	24	Commonwealth v. Chestnut St. Nat. Bank	181
Carlisle Bank v. Graham	152	v. Citizens' Nat. Bank	128
Case v. Citizens' Bank	176	v. Manufacturers', &c. Bank	53
v. Small	44, 157	v. Tenny	103
v. Terrell	163	Commonwealth Nat. Bank v. Mechanics' Nat. Bank	154
Casey v. Adams	92		
v. Credit Mobilier	158, 177		
v. Galli	20, 42, 45, 53, 62		
Central Bank v. Conn. Mut. Life Ins. Co.	141		
Central Nat. Bank v. Richland Nat. Bank	85, 180		
Certain Stockholders, <i>In re</i>	154		
Charleston Nat. Bank v. Bradford	90, 91		

TABLE OF CASES CITED

ix

Concord First Nat. Bank v. Hawkins	21, 38, 94	Driesback v. National Bank	86
v. Second Nat. Bank	55, 95	Duncan v. First Nat. Bank	83, 87
Consolidated Nat. Bank v. Pima County	128	Duncomb v. N. Y. H. & N. R. R.	94
Continental Nat. Bank v. Elliott Nat. Bank	29, 179	Dutton v. Citizens' Nat. Bank	135
v. Folsom	2, 20, 85	E.	
Conway v. Chestnut St. Bank	181	Earle, <i>In re</i>	155
v. Halsey	40, 171	v. Carson	82, 45
Cook County Nat. Bank v. United States	58	v. Pennsylvania	155, 162, 168, 181
Cooper v. Leather Manufacturers' Bank	16	Eastern Townships Bank v. Bank of St. Albans	19, 97, 167
Corcoran v. Batchelder	8, 93	Easton v. Iowa	140
Corn Exchange Bank v. Blye	181	Eaton v. Pacific Bank	82, 34, 36, 42, 99, 162
Covington v. Covington First Nat. Bank	140	Eidman v. Bowman	34
Covington City Nat. Bank v. Covington	137	Ellerbe v. National Exchange Bank	23
Cracken v. Covington City Nat. Bank	180	Ellis v. Little	157
Cragie v. Hadley	158	Endres v. First National Bank	93
v. Smith	158	Eno, <i>In re</i>	110
Crocker v. Marine Bank	19	Eepy v. Cincinnati Bank	69
v. National Bank	85, 87	Evans v. United States	102
v. Whitney	20	Evansville Bank v. Britton	126
Cross v. North Carolina	110	Evansville Nat. Bank v. Metropolitan Nat. Bank	95
Cummings v. National Bank	126, 129, 137, 138	Exchange Bank Cases	123
D.		Exchange Nat. Bank v. Miller	129, 135
Daggs v. Phoenix Bank	84	F.	
Danforth v. National State Bank	88, 89	Farmers' Bank v. Dearing	1, 2, 85, 89, 92
Dangerfield Nat. Bank v. Ragland	91	Farmers' & Merchants' Bank v. Hall	178
Davenport Bank v. Davenport	127	v. Hoagland	86
Davey v. First Nat. Bank	89	v. Wallace	26
Davis v. Elmira Savings Bank	168	Farmington v. Downing	30, 185
v. Essex Baptist Society	44	Faulkner v. Marion Nat. Bank	91
v. Stevens	17, 28, 81, 43, 49, 114, 162	Fayette County Bank v. Du-shane	86
v. Weed	50	Feckheimer v. Exchange Bank	95
Decatur Nat. Bank v. Johnston	179	Finn v. Brown	39, 114
Delano v. Butler	34, 41, 47, 99	First Bank of Charlotte v. Exchange Bank of Baltimore	26
v. Case	158	First Bank of Chicago v. Farwell	125, 139
Dennis v. First Nat. Bank	176	First Bank of Lyons v. Ocean Bank	74
Deweese v. Smith	155	First Bank of Utica v. Waters	134
Dickinson v. Central Bank	28	First Nat. Bank v. Albia	136
Doty v. Larimore Nat. Bank	80	v. American Nat. Bank	21, 25
Dow v. Irasburgh Nat. Bank	87	v. Armstrong	25
v. United States	106, 108		
Dresser v. Traders' Nat. Bank	24		

First Nat. Bank v. Ayers	126	G.	
<i>v. Bennington</i>	24	<i>Gadsden v. Thrush</i>	90
<i>v. Chapman</i>	132	<i>Gallatin Bank v. Commissioners</i>	132
<i>v. Chehalis County</i>	123	<i>Gallot v. United States</i>	118
<i>v. Childs</i>	85	<i>Garner v. Second Nat. Bank</i>	180
<i>v. Concord</i>	135	<i>Gatch v. Fitch</i>	41
<i>v. Covington</i>	140	<i>Gerner v. Mosher</i>	116
<i>v. Denson</i>	92	<i>v. Thompson</i>	172
<i>v. Douglas County</i>	139	<i>Gibson v. Peters</i>	146, 170, 171
<i>v. Drake</i>	20	<i>Gold Mining Co. v. Nat. Bank</i>	98
<i>v. Exchange Bank</i>	23	<i>Graham v. Bank of New York</i>	27
<i>v. Fancher</i>	139	<i>v. Platt</i>	60
<i>v. Garlinghouse</i>	88	<i>Graves v. Lebanon Nat. Bank</i>	116
<i>v. Grimes</i>	89	<i>v. United States</i>	112
<i>v. Hall</i>	178	<i>Gray v. Logan County</i>	126
<i>v. Herbert</i>	114, 123, 126	<i>v. Portland Bank</i>	34
<i>v. Hughes</i>	175	<i>Guild v. First Nat. Bank</i>	82
<i>v. Hunter</i>	91	<i>Guthrie Nat. Bank v. Earl</i>	21, 22
<i>v. La Due</i>	180		
<i>v. Lamb</i>	85		
<i>v. Lindsay</i>	134		
<i>v. McCarthy</i>	92, 261	H.	
<i>v. McEntire</i>	90	<i>Hade v. McVay</i>	86, 87
<i>v. McInturf</i>	90	<i>Hagar v. Union Nat. Bank</i>	95
<i>v. Merchants' Nat. Bank</i>	101	<i>Hale v. Walker</i>	28, 44
<i>v. Miltonberger</i>	90	<i>Hampton v. Foster</i>	49
<i>v. Morgan</i>	92	<i>Hanover Nat. Bank v. First</i>	
<i>v. Overman</i>	89	<i>Nat. Bank</i>	25, 102, 117
<i>v. Peterborough</i>	93, 114	<i>Harkness v. Guthrie</i>	175
<i>v. Province</i>	128	<i>Harvey v. Allen</i>	151, 181
<i>v. Ratliff</i>	25	<i>v. Lord</i>	46, 48, 145, 146, 164
<i>v. Richmond</i>	114, 126	<i>Haseltine v. Central Bank</i>	90, 91
<i>v. Rowley</i>	89	<i>Hayden v. Chemical Nat. Bank</i>	176, 178
<i>v. San Francisco</i>	128	<i>v. Thompson</i>	172
<i>v. Selden</i>	140	<i>Hayes v. Beardsley</i>	179
<i>v. Smith</i>	91	<i>v. Shoemaker</i>	81
<i>v. Stone</i>	126	<i>v. Yawger</i>	81
<i>v. Strang</i>	152	<i>Hayt, In re</i>	90
<i>v. Tinatman</i>	83	<i>Hazard v. National Exchange</i>	
<i>v. Treasurer</i>	129	<i>Bank</i>	29
<i>v. Turner</i>	90, 133, 178	<i>Heath v. Bank of Lafayette</i>	27
<i>v. Waters</i>	132, 133	<i>Hendee v. Conn. & P. R. R. Co.</i>	162, 170
<i>Fish v. Olin</i>	156	<i>Henderson v. Myers</i>	167
<i>Flannagan v. California Nat. Bank</i>	23	<i>Hepburn v. School Directors</i>	181, 132, 133
<i>Fogg v. Blair</i>	82	<i>Hershire v. First Nat. Bank</i>	114
<i>Folsom v. United States</i>	111	<i>Higley v. Beverley Nat. Bank</i>	86
<i>Fortier v. New Orleans Bank</i>	26	<i>Hill v. Barre Nat. Bank</i>	85, 88
<i>Fowler v. Scully</i>	93, 95	<i>Hills v. Exchange Bank</i>	19, 126
<i>Freeman Manuf. Co. v. Nat. Bank of the Republic</i>	180	<i>Hintermister v. First Nat. Bank</i>	85
<i>Frelinghuysen v. Baldwin</i>	46, 162	<i>Hitz, Ex parte</i>	102
<i>Fridley v. Bowen</i>	19, 27	<i>v. Jenks</i>	164
<i>Fritts v. Palmer</i>	20		

TABLE OF CASES CITED

xi

Hobart v. Gould	80, 45	Lake Nat. Bank v. Wolfebor-	
v. Johnson	42	ough Sav. Bank	181
Hobbs v. Western Nat. Bank	29	Lander v. Mercantile Bank	126
Hoke v. People	110	Lanham v. First Nat. Bank of	
Holmes v. Bank of Wilmington	180	Crete	91
v. Nat. Bank	19, 85	Lantry v. Wallace	27, 45, 95, 99,
Horton v. Mercer	44, 49		116, 155
Houghton, <i>Ex parte</i>	65	Lasater v. First Nat. Bank	92
Howarth v. Lombard	155	Latimer v. Bard	35
Howell v. Cassopolis	137	Lazar v. National Union Bank	87
Hower v. Weiss Malting	181	Lealos v. Union Nat. Bank	90
Hulitt v. Bell	99	Lease v. Barschall	42
Hunt, Appellant	69	Leather Manufacturers' Bank	
v. United States	102	v. Cooper	16, 85
		Lebanon Nat. Bank v. Karmany	87
I.		Leffingwell v. Warren	47
Illinois Bank, <i>Re</i>	157	Leyson v. Davis	82
Illinois Nat. Bank v. Kinsella	133	Lieberman v. First Nat. Bank	116
Interstate Nat. Bank v. Ferguson	23	Lionberger v. Rouse	125
Irons v. Manufacturers' Nat.		Lockwood v. National Bank	39, 58
Bank	42, 48, 49, 146, 156,	Logan County Bank v. Townsend	21
	163, 164, 177	Lomb v. Pioneer S. & L. Co.	182
		London v. Hope	140
J.		Loney, <i>In re</i>	110
Jackson v. United States	118, 121,	Louisville Trust Co. v. Ken-	
	162, 167	tucky Nat. Bank	90
Jenkins v. Neff	188	Lucas v. Government Nat. Bank	86
Jewett v. United States	103, 111	Lynch v. National Bank	87
Johnson v. Charlottesville Nat.		Lyons v. Lyons Bank	27
Bank	23		
v. Gloversville Nat. Bank	85	M.	
Johnston v. Laffin	29, 42, 44, 95	McAden v. Commissioners of	
v. United States	117, 162	Mecklenburg County	130
		McCann v. First Nat. Bank	37
K.		McCartney v. Earle	140
Kansas Valley Bank v. Rowell	20,	McClaine v. Rankin	49
	26	McClellan v. Chipman	22
Kennedy v. Gibson	45, 46, 48	McConville v. Gilmour	146, 156
Kerr v. Urie	43	McCormick v. Market Bank	25
Keyser v. Hitz	43, 45, 53, 54, 115,	McCreary v. First Nat. Bank	90
	145	McDonald v. Chemical Nat.	
King v. Armstrong	168	Bank	178
v. Pomeroy	49	v. Thompson	42, 140, 155
Kinser v. Farmers' Nat. Bank	85	v. Williams	82, 48, 98, 98, 99
Knapp v. Williamsport Nat. Bank	85	McGoffin v. Boyle Nat. Bank	27
		McHenry v. Downer	123
		McKnight v. United States	110
		McMahon v. Palmer	123, 134, 186
		Magruder v. Colston	28
		Maguire v. Board of Revenue	123,
			186
L.		Main v. Second Nat. Bank	19
Laing v. Burley	44	Manufacturers' Nat. Bank v.	
Lake Benton First Nat. Bank		Baack	19
v. Watt	90		

Manufacturers' Nat. Bank, Re	141	National Bank v. Mechanics'	
v. Hall	21	Nat. Bank	169
Marion Nat. Bank v. Thompson	89	v. Mobile	138
Market Bank v. Pacific Bank	177	v. Wade	172
Matteson v. Dent	32, 44, 50	v. Watsontown Bank	80
Matthews v. Abbott	27	v. Whitney	22, 26
v. Skinker	20	National Bank of Auburn v.	
Maynard v. Mechanics' Bank	53	Lewis	87
Mayor of Macon v. First Nat.		National Bank of Commerce v.	
Bank	137, 138	New Bedford	123
Mechanics' Nat. Bank v. Baker	133	National Bank of Gloversville	
Mercantile Bank v. Hubbard	132	v. Wells	19, 82
v. New York	123, 130, 131,	National Bank of Madison v.	
	134, 135	Davis	85
v. Shields	134	National Bank of Mendota v.	
Mercer v. Dyer	168, 178	Smith	137
Merchants' Bank v. Fouché	99	National Bank of Oskaloosa v.	
v. Masonic Hall Trustees	141	Young	137
v. Mears	27	National Bank of Peterborough	
v. Myers	86	v. Childs	87
v. Pennsylvania	123	National Exchange Bank v.	
v. Sevier	23	Moore	89
v. State Bank	17, 24, 69, 73	v. Peters	172
v. Wehrmann	148	National Security Bank v. But-	
Merrill v. National Bank	155, 162,	ler	176, 179, 180
	168, 178	National Shoe & Leather Bank	
Metropolitan Bank v. Claggett	53	v. Mechanics' Nat. Bank	88, 176
Metropolitan Stock Exchange		National State Bank v. Brain-	
v. Lyndonville Nat. Bank	25	ard	89
Meyer v. First Nat. Bank of		v. Mayor	125
Cœur d'Alene	261	National State Bank of New-	
v. Richmond	155	ark v. Boylan	86
Meyers v. Valley Nat. Bank	96, 114	Nelson v. Burrows	172
Michigan Ins. Bank v. Eldred	53	Nevada Nat. Bank v. Dodge	133
Mix v. Bank of Bloomington	62	New Orleans Bank v. Adams	92
Moore v. Jones	31, 44, 114	v. Raymond	26
Morehouse v. Bank of Oswego	85	Newport v. Mudgett	133, 178
Morrison v. Price	36, 41, 99	Newport Nat. Bank v. New-	
Morseman v. Younkin	125	port Board of Education	21
Movius v. Lee	19, 38, 39, 93, 171	New York v. Eno	110
Mullett v. United States	171	v. McLean	135

N.

National Albany Exchange	
Bank v. Wells	132
National Bank v. Baltimore	132, 133
v. Case	24, 46
v. Colby	181
v. Commonwealth	125, 139
v. Davis	88, 89, 91
v. Fancher	139
v. Johnson	83
v. Kimball	129, 138
v. Matthews	22

Nicholson v. New Castle Nat.	
Bank	24
Norfolk Nat. Bank v. Schwenk	91

O.

Ocean Bank v. Carll	157
O'Hare v. Second Nat. Bank	93
Ordway v. Central Nat. Bank	87
Osborn v. First Nat. Bank	89, 91
Overholt v. Mt. Pleasant Nat.	
Bank	86
Owensboro Nat. Bank v. Owens-	
boro	128

TABLE OF CASES CITED

xiii

P.		Raynor v. Pacific Bank	176, 180, 181
Pacific Nat. Bank v. Eaton	84, 99	Redhead v. Iowa Nat. Bank	123
<i>v. Mixter</i>	85, 180	Reynolds v. Crawfordsville Bank	20, 26, 27
<i>v. Pierce County</i>	133	Rhoner v. First Nat. Bank of Allentown	85, 180,
Packard v. Lewiston	186	Rich v. Packard Nat. Bank	137
Palmer v. McMahon	134	<i>v. State Bank of Lincoln</i>	2, 38, 89, 95, 97, 114
Pardoe v. Iowa State Nat. Bank	91	Richards v. Attleborough Nat. Bank	81
Parker v. Robinson	49	<i>v. Kountze</i>	26
Patterson v. Plummer	116	<i>v. Rock Rapids</i>	124, 126, 127, 139
Pattison v. Syracuse Bank	152	Richmond v. Irons	80, 43, 45, 46, 47, 48, 140, 143, 162
Paul v. McGrew	114	<i>v. Scott</i>	131
Pauly v. State Loan & Trust Co.	81, 44, 114	Riddle v. Butler Bank	69
Peavey v. Greenfield	130	Rieger v. United States	103, 106, 113
Pelton v. National Bank	129, 138	Riesterer v. Horton Land Co.	27
People v. Commissioners	124, 127, 132, 135	Roberts v. Hill	150, 167, 176, 177
<i>v. National Bank of D. O. Mills & Co.</i>	128	Robinson v. Bank of New Berne	26, 88, 180
<i>v. Ryan</i>	130	<i>v. Hall</i>	23
<i>v. Weaver</i>	126, 138	<i>v. Southern Nat. Bank</i>	21, 32, 44, 45, 155
People's Bank v. National Bank	23	Rockwell v. Farmers' Nat. Bank	89
Pepper v. Fidelity, &c. Co.	48	Roebbling v. First Nat. Bank	20
Peterborough Nat. Bank v. Childs	86	Rosenback v. Salt Springs Nat. Bank	95
Peters v. Bain	82	Rosenblatt v. Johnston	145, 163
<i>v. United States</i>	107, 108		
Petré v. Commercial Nat. Bank	19	S.	
Pickett v. Merchants' Nat. Bank	87	Safford v. Plattsburgh Nat. Bank	180
Pittsburg Locomotive Works v. State Nat. Bank	24	St. Louis Nat. Bank v. Allen	19
Planters' L. & S. Bank v. Berry	180	<i>v. Brinkman</i>	19
Platt, Re	157, 169	<i>v. Papin</i>	135, 138
<i>v. Beebe</i>	156	Schmidt v. National Bank of Selma	153
Porter v. United States	102, 113	Schofield v. State Bank of Lincoln	26
Prescott Nat. Bank v. Butler	24	<i>v. State Nat. Bank</i>	21
Price v. Abbott	16, 41, 156, 162, 167	<i>v. Twining</i>	45
<i>v. Coleman</i>	180	Schuyler Nat. Bank v. Bollong	82
<i>v. Whitney</i>	43, 49	<i>v. Gadsden</i>	90
<i>v. Yates</i>	47, 157	Scobee v. Bean	132
Primm v. Fort	133	Scott v. Armstrong	163
Prosser v. First Nat. Bank	95	<i>v. Dewees</i>	35, 44, 45, 94, 115
Puget Sound Nat. Bank v. King County	134	<i>v. Latimer</i>	35
<i>v. Seattle</i>	135	<i>v. Pequonnock Nat. Bank</i>	19, 29, 179
Putnam v. United States	23, 111	<i>v. United States</i>	261
Q.			
Quint v. First Nat. Bank	91		
R.			
Rankin v. Barton	261		
<i>v. Fidelity Trust Co.</i>	43, 44, 99		

xv

Union Nat. Bank v. Louisville, &c. Ry. Co.	84	Van Campen, <i>Re</i>	108, 107, 109
v. Tourzaline Imp. Co.	21	Van Reed v. People's Nat. Bank	176
Uniontown Nat. Bank v.		Van Slyke v. Wisconsin	114, 123
Stauffer	85, 86	Venango Nat. Bank v. Taylor	162, 176
United States v. Allen	108, 110	Virginia Nat. Bank v. Rich- mond	114, 123
v. Barry	37		
v. Bartow	112, 115	W.	
v. Bennett	65		
v. Berry	110, 113	Waite v. Dowley	114, 187
v. Booker	108	Walden Nat. Bank v. Birch	21, 95
v. Britton	98, 102, 106, 107, 111	Waldron v. Alling	155
		Washington Nat. Bank v. Eckels	146
v. Buskey	110	Wasson v. First Nat. Bank	130
v. Cadwallader	111	v. King County	133
v. Conant	108, 111	Watkins v. Lawrence Nat. Bank	140
v. Cook County Bank	167	Watt v. First Nat. Bank	90, 91
v. Creclilius	107	Weber v. Spokane Nat. Bank	97
v. Curtis	116	Weeks v. International Trust Co.	48
v. De Walt	111	Weinhard v. Commercial Nat. Bank	99
v. Ege	110	Welles v. Graves	94, 154, 172
v. Farrington	102	Wells v. Larrabee	44
v. Fish	102, 105, 106, 110, 111	Western Nat. Bank v. Armstrong	23
v. French	108	Weyer v. Franklin Nat. Bank	44
v. German	110	Wheeler v. National Bank	86
v. Graves	110	Wherry v. Hale	26
v. Greve	112	Whitbeck v. Mercantile Nat. Bank	130
v. Hade	111	White v. Knox	168
v. Hall	115	Whitney v. Butler	81, 50
v. Harper	103, 104, 105, 106, 107, 109	Whitney Nat. Bank v. Parker	126
v. Hughitt	108	Whittemore v. Amoskeag Nat. Bank	102
v. Jewett	103, 112	Wickham v. Hull	42, 49
v. Kenney	110	Wild, <i>Re</i>	88
v. Knox	42	Wiley v. Brattleboro Bank	152
v. Laescki	72	v. Starbuck	86, 88
v. Lee	103, 104, 105	Willard Manuf. Co. v. Mer- chants' Nat. Bank	176
v. McClure	113	Williams v. City Nat. Bank	89
v. Martin	102	v. Halliard	167
v. Means	110	v. Supervisors	138, 139
v. Neale	40	Williamson v. American Bank	49
v. Northway	104, 106, 111, 112	Wilson v. Loan Co.	85
v. Potter	101, 108, 115	Winters v. Armstrong	44
v. Smith	111	Witters v. Foster	93, 94, 97, 98, 164, 170, 172, 173
v. Taintor	105, 109	v. Sowles	81, 41, 43, 45, 46, 49, 50, 93, 94
v. Voorhees	105, 109	Wolverton v. Exchange Nat. Bank	84
v. Young	107	Woodruff v. Mississippi	67
v. Youtsey	108, 106, 110	Woods v. People's Bank	20
v. Warner	106, 112	Woodward v. Ellsworth	153, 163
V.			
Van Allen v. Assessors	17, 28, 32, 37, 94, 108, 124, 125		
Van Antwerp v. Hulburd	57, 61, 74, 115, 162		

TABLE OF CASES CITED

Worcester Bank v. Cheeney	27	Y.	
Wright v. First Nat. Bank of Greensburg	87	Yardley v. Philler	179
v. Henkel	102	Yerkes v. Bank of Port Jervis	19
v. Merchants' Nat. Bank	33, 41, 74, 81, 95, 99, 141, 162, 163, 175, 176	Young v. McKay	81
Wroten's Assignee v. Armat	26, 93	v. Vough	96
Wyman v. Citizens' Nat. Bank	94	Z.	
X.		Zimmerman v. Carpenter	60
Xenia Bank v. Stewart	95		

NATIONAL BANKS

[TITLE 62 OF THE UNITED STATES REVISED
STATUTES, AND THE AMENDMENTS THERE-
TO, ANNOTATED AND EXPLAINED]

CHAPTER I.

ORGANIZATION AND POWERS.

The Act of June 3, 1864, ch. 106, known by the Act of June 20, 1874, ch. 343, § 1, "as the National Bank Act" is constitutional. *Farmers' Bank v. Dearing*, 91 U. S. 29. The execution of all laws relating to this subject is placed on the Comptroller of the Currency by Rev. Stat. §§ 324-333, and it is his duty to report annually to Congress.

SECT. 5133. [Articles of Association]. — "Associations for carrying on the business of banking under this Title may be formed by any number of natural persons, not less in any case than five. They shall enter into articles of association, which shall specify in general terms the object for which the association is formed, and may contain any other provisions, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. These articles shall be signed by the persons uniting to form the association, and a copy of them shall be forwarded to the Comptroller of the Currency, to be filed and preserved in his office."

See notes §§ 5154, 5191, 5220, — *Rich v. State Bank of Lincoln*, 7 Neb. 201; *Bullard v. Bank*, 18 Wall. 589; *Continental Bank v. Folsom*, 3 S. E. Rep. 269. National banks are designed to aid the government in the administration of an important branch of the public service. Hence, the States can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. *Farmers' Bank v. Dearing*, 91 U. S. 29. Under the national currency act of 1864, and the amendatory act of 1865, banking associations might have been organized without the right to obtain, issue, and circulate notes. These acts placed no restriction upon the aggregate amount of capital of the banks which might be organized under them. 11 A. G. Op. 334. The prosecution of an action against the receiver of a national bank in a Canadian court for the recovery of bonds, was restrained by the circuit court, in *Hendee v. Conn. & P. R. R. Co.*, 26 Fed. 677.

Under the Act of May 18, 1884, ch. 53, the national bank laws are in force in the Territory of Alaska. 19 A. G. Op. 678.

By § 17 of the Act of May 2, 1890, ch. 182 (26 St. 81), which established a temporary government for the Territory of Oklahoma, it was provided that the provisions of this title and amendments thereto shall apply to the Territory of Oklahoma. See 19 A. G. Op. 315.

The Act of July 12, 1882, ch. 260 (22 St. 162), provides that any national banking association organized under 12 St. 665; 13 St. 99; 21 St. 66; or under Rev. Stats. §§ 5133, 5134, 5135, 5136, 5154 —

“may, at any time within the two years next previous to the date of the expiration of its corporate existence under present law, and with the approval of the Comptroller of the Currency, to be granted, as hereinafter provided, extend its period of succession by amending its articles of associa-

tion for a term of not more than 20 years from the expiration of the period of succession named in said articles of association, and shall have succession for such extended period, unless sooner dissolved by the act of shareholders owning two-thirds of its stock, or unless its franchise becomes forfeited by some violation of law, or unless hereafter modified or repealed.

"SEC. 2. That such amendment of said articles of association shall be authorized by the consent in writing of shareholders owning not less than two-thirds of the capital stock of the association; and the board of directors shall cause such consent to be certified under the seal of the association, by its president or cashier, to the Comptroller of the Currency, accompanied by an application made by the president or cashier for the approval of the amended articles of association by the Comptroller; and such amended articles of association shall not be valid until the Comptroller shall give to such association a certificate under his hand and seal that the association has complied with all the provisions required to be complied with, and is authorized to have succession for the extended period named in the amended articles of association.

"SEC. 3. That upon the receipt of the application and certificate of the association provided for in the preceding section, the Comptroller of the Currency shall cause a special examination to be made, at the expense of the association, to determine its condition; and if after such examination or otherwise it appears to him that said association is in a satisfactory condition, he shall grant his certificate of approval provided for in the preceding section, or if it appears that the condition of said association is not satisfactory, he shall withhold such certificate of approval.

"SEC. 4. That any association so extending the period of its succession shall continue to enjoy all the rights and privileges and immunities granted and shall continue to be subject to all the duties, liabilities, and restrictions imposed by the Revised Statutes of the United States and other acts having reference to national banking associations, and it shall continue to be in all respects the identical association it was before the extension of its period of succession: *Provided, however,* That the jurisdiction for suits hereafter brought by or against any association established under any law providing for national banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national banking associations may be doing business when such suits may be begun: And all laws and parts of laws of the United States inconsistent with this proviso be, and the same are hereby, repealed. (See note, § 5234, *infra*.)

"SEC. 5. That when any national banking association has amended its articles of association as provided in this act, and the Comptroller has granted his certificate of approval, any shareholder not assenting to such amendment may give notice in writing to the directors, within thirty days from the date of the certificate of approval, of his desire to withdraw from said association, in which case he shall be entitled to receive from said banking association the value of the shares so held by him, to be ascertained by an appraisal made by a committee of three persons one to be selected by such shareholder, one by the directors, and the third by the first two; and in case the

value so fixed shall not be satisfactory to any such shareholder, he may appeal to the Comptroller of the Currency, who shall cause a reappraisal to be made, which shall be final and binding; and if said reappraisal shall exceed the value fixed by said committee, the bank shall pay the expenses of said reappraisal, and otherwise the appellant shall pay said expenses; and the value so ascertained and determined shall be deemed to be a debt due, and be forthwith paid, to said shareholder from said bank; and the shares so surrendered and appraised shall, after due notice, be sold at public sale, within 30 days after the final appraisal provided in this section: *Provided*, That in the organization of any banking association intended to replace any existing banking association, and retaining the name thereof, the holders of stock in the expiring association shall be entitled to preference in the allotment of the shares of the new association in proportion to the number of shares held by them respectively in the expiring association.

“SEC. 6. That the circulating notes of any association so extending the period of its succession which shall have been issued to it prior to such extension shall be redeemed at the Treasury of the United States, as provided in § 3 of the act of 1874, and such notes when redeemed shall be forwarded to the Comptroller of the Currency, and destroyed as now provided by law; and at the end of three years from the date of the extension of the corporate existence of each bank the association so extended shall deposit lawful money with the Treasurer of the United States sufficient to redeem the remainder of the circulation which was outstanding at the date of its extension, as provided in Rev. Stats. §§ 5222, 5224, 5225; and any gain

that may arise from the failure to present such circulating notes for redemption shall inure to the benefit of the United States; and from time to time, as such notes are redeemed or lawful money deposited therefor as provided herein, new circulating notes shall be issued as provided by this act, bearing such devices, to be approved by the Secretary of the Treasury, as shall make them readily distinguishable from the circulating notes heretofore issued: *Provided, however,* That each banking association which shall obtain the benefit of this act shall reimburse to the Treasury the cost of preparing the plate or plates for such new circulating notes as shall be issued to it.

“SEC. 7. That national banking associations whose corporate existence has expired or shall hereafter expire, and which do not avail themselves of the provisions of this act, shall be required to comply with the provisions of Rev. Stats. §§ 5221, 5222, in the same manner as if the shareholders had voted to go into liquidation, as provided in Rev. Stats. § 5220; and the provisions of Rev. Stats. §§ 5224, 5225, shall also be applicable to such associations, except as modified by this act; and the franchise of such association is hereby extended for the sole purpose of liquidating their affairs until such affairs are finally closed.

“SEC. 8. That national banks now organized or hereafter organized, having a capital of \$150,000, or less, shall not be required to keep on deposit or deposit with the Treasurer of the United States United States bonds in excess of one-fourth of their capital stock as security for their circulating notes; but such banks shall keep on deposit or deposit with the Treasurer of the United States the amount of bonds as herein required. And such of those banks having on deposit bonds in excess of that

amount are authorized to reduce their circulation by the deposit of lawful money as provided by law; *Provided*, That the amount of such circulating notes shall not in any case exceed ninety per centum of the par value of the bonds deposited as herein provided: *Provided further*, That the national banks which shall hereafter make deposits of lawful money for the retirement in full of their circulation shall at the time of their deposit be assessed for the cost of transporting and redeeming their notes then outstanding, a sum equal to the average cost of the redemption of national-bank notes during the preceding year, and shall thereupon pay such assessment. And all national banks which have heretofore made or shall hereafter make deposits of lawful money for the reduction of their circulation shall be assessed and shall pay an assessment in the manner specified in § 3 of the act approved June 20, 1874, for the cost of transporting and redeeming their notes redeemed from such deposits subsequently to June 30, 1881.

“SEC. 9. That any national banking association now organized or hereafter organized, desiring to withdraw its circulating notes, upon a deposit of lawful money with the Treasurer of the United States, as provided in § 4 of the act of June 20, 1874, or as provided in this act, is authorized to deposit lawful money and withdraw a proportionate amount of the bonds held as security for its circulating notes in the order of such deposits; and no national bank which makes any deposit of lawful money in order to withdraw its circulating notes shall be entitled to receive any increase of its circulation for the period of six months from the time it made such deposit of lawful money for the purpose aforesaid: *Provided*, That not more than three

millions of dollars of lawful money shall be deposited during any calendar month for this purpose: *And provided further*, That the provisions of this section shall not apply to bonds called for redemption by the Secretary of the Treasury, nor to the withdrawal of circulating notes in consequence thereof.

“SEC. 10. That upon a deposit of bonds as described by §§ 5159, 5160, except as modified by § 4 of the act of June 20, 1874, and as modified by § 8 of this act, the association making the same shall be entitled to receive from the Comptroller of the Currency circulating notes of different denominations, in blank, registered and countersigned as provided by law, equal in amount to ninety per centum of the current market value, not exceeding par, of the United States bonds so transferred and delivered, and at no time shall the total amount of such notes issued to any such association exceed ninety per centum of the amount at such time actually paid in of its capital stock; and the provisions of Rev. Stats. §§ 5171, 5176, are hereby repealed.” [This section was amended by § 12 of the Act of March 14, 1900, stated below.]

“SEC. 11. That the Secretary of the Treasury is hereby authorized to receive at the Treasury any bonds of the United States bearing three and a half per centum interest, and to issue in exchange therefor an equal amount of registered bonds of the United States of the denominations of \$50, \$100, \$500, \$1000, and \$10,000, of such form as he may prescribe, bearing interest at the rate of three per centum per annum, payable quarterly at the Treasury of the United States. Such bonds shall be exempt from all taxation by or under State authority, and be payable at the pleasure of the United States: *Provided*, That the

bonds herein authorized shall not be called in and paid so long as any bonds of the United States heretofore issued bearing a higher rate of interest than three per centum, and which shall be redeemable at the pleasure of the United States, shall be outstanding and uncalled. The last of the said bonds originally issued under this act, and their substitutes, shall be first called in, and this order of payment shall be followed until all shall have been paid.

“SEC. 12. That the Secretary of the Treasury is authorized and directed to receive deposits of gold coin with the Treasurer or assistant treasurers of the United States, in sums not less than \$20, and to issue certificates therefor in denominations of not less than \$20 each, corresponding with the denominations of United States notes. The coin deposited for or representing the certificates of deposits shall be retained in the Treasury for the payment of the same on demand. Said certificates shall be receivable for customs, taxes, and all public dues, and when so received may be reissued; and such certificates, as also silver certificates, when held by any national banking association, shall be counted as part of its lawful reserve; and no national banking association shall be a member of any clearing-house in which such certificates shall not be receivable in the settlement of clearing-house balances: *Provided*, That the Secretary of the Treasury shall suspend the issue of such gold certificates whenever the amount of gold coin and gold bullion in the Treasury reserved for the redemption of United States notes falls below one hundred millions of dollars; and the provisions of Rev. Stats. § 5207, shall be applicable to the certificates herein authorized and directed to be issued.

"SEC. 13. That any officer, clerk, or agent of any national banking association who shall wilfully violate the provisions of an act entitled 'An act in reference to certifying checks by national banks,' approved March 3, 1869, being Rev. Stats. § 5208, or who shall resort to any device, or receive any fictitious obligation, direct or collateral, in order to evade the provisions thereof, or who shall certify checks before the amount thereof shall have been regularly entered to the credit of the dealer upon the books of the banking association, shall be deemed guilty of a misdemeanor, and shall on conviction thereof in any circuit or district court of the United States, be fined not more than \$5000, or shall be imprisoned not more than 5 years, or both, in the discretion of the court.

"SEC. 14. That Congress may at any time amend, alter, or repeal this act and the acts of which this is amendatory."

The Act of April 12, 1902, ch. 503 (32 St. 102), provided —

"That the Comptroller of the Currency is hereby authorized, in the manner provided by, and under the conditions and limitations of, the Act of July 12, 1882, to extend for a further period of twenty years the charter of any national banking association extended under said Act which shall desire to continue its existence after the expiration of its charter."

The Act of March 14, 1900, ch. 41 (31 St. 48), provided —

"SEC. 6. That the Secretary of the Treasury is hereby authorized and directed to receive deposits of gold coin

with the Treasurer or any assistant treasurer of the United States in sums of not less than twenty dollars, and to issue gold certificates therefor in denominations of not less than twenty dollars, and the coin so deposited shall be retained in the Treasury and held for the payment of such certificates on demand, and used for no other purpose. Such certificates shall be receivable for customs, taxes, and all public dues, and when so received may be reissued, and when held by any national banking association may be counted as a part of its lawful reserve: *Provided*, That whenever and so long as the gold coin held in the reserve fund in the Treasury for the redemption of United States notes and Treasury notes shall fall and remain below one hundred million dollars the authority to issue certificates as herein provided shall be suspended: *And provided further*, That whenever and so long as the aggregate amount of United States notes and silver certificates in the general fund of the Treasury shall exceed sixty million dollars the Secretary of the Treasury may, in his discretion, suspend the issue of the certificates herein provided for: *And provided further*, That of the amount of such outstanding certificates one-fourth at least shall be in denominations of fifty dollars or less: *And provided further*, That the Secretary of the Treasury may, in his discretion, issue such certificates in denominations of ten thousand dollars, payable to order. And § 5193 of the Revised Statutes of the United States is hereby repealed.

“SEC. 10. That § 5138 of the Revised Statutes is hereby amended so as to read as follows :

““Section 5138. No association shall be organized with a less capital than \$100,000, except that banks with a

capital of not less than \$50,000 may, with the approval of the Secretary of the Treasury, be organized in any place the population of which does not exceed six thousand inhabitants, and except that banks with a capital of not less than \$25,000 may, with the sanction of the Secretary of the Treasury, be organized in any place the population of which does not exceed three thousand inhabitants. No association shall be organized in a city the population of which exceeds fifty thousand persons with a capital of less than \$200,000.'

"SEC. 11. That the Secretary of the Treasury is hereby authorized to receive at the Treasury any of the outstanding bonds of the United States bearing interest at five per centum per annum, payable February 1, 1904, and any bonds of the United States bearing interest at four per centum per annum, payable July 1, 1907, and any bonds of the United States bearing interest at three per centum per annum, payable August 1, 1908, and to issue in exchange therefor an equal amount of coupon or registered bonds of the United States in such form as he may prescribe, in denominations of \$50 or any multiple thereof, bearing interest at the rate of two per centum per annum, payable quarterly, such bonds to be payable at the pleasure of the United States after thirty years from the date of their issue, and said bonds to be payable, principal and interest, in gold coin of the present standard value, and to be exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority: *Provided*, That such outstanding bonds may be received in exchange at a valuation not greater than their present worth to yield an income of two and one-quarter per centum per annum;

and in consideration of the reduction of interest effected, the Secretary of the Treasury is authorized to pay to the holders of the outstanding bonds surrendered for exchange, out of any money in the Treasury not otherwise appropriated, a sum not greater than the difference between their present worth, computed as aforesaid, and their par value, and the payments to be made hereunder shall be held to be payments on account of the sinking fund created by § 3694 of the Revised Statutes: *And provided further*, That the two per centum bonds to be issued under the provisions of this Act shall be issued at not less than par, and they shall be numbered consecutively in the order of their issue, and when payment is made the last numbers issued shall be first paid, and this order shall be followed until all the bonds are paid, and whenever any of the outstanding bonds are called for payment interest thereon shall cease three months after such call; and there is hereby appropriated out of any money in the Treasury not otherwise appropriated, to effect the exchanges of bonds provided for in this Act, a sum not exceeding one-fifteenth of one per centum of the face value of said bonds, to pay the expense of preparing and issuing the same and other expenses incident thereto.

“SEC. 12. That upon the deposit with the Treasurer of the United States, by any national banking association, of any bonds of the United States in the manner provided by existing law, such association shall be entitled to receive from the Comptroller of the Currency circulating notes in blank, registered and countersigned as provided by law, equal in amount to the par value of the bonds so deposited; and any national banking association now having bonds on deposit for the security of circulating notes, and upon

which an amount of circulating notes has been issued less than the par value of the bonds, shall be entitled, upon due application to the Comptroller of the Currency, to receive additional circulating notes in blank to an amount which will increase the circulating notes held by such association to the par value of the bonds deposited, such additional notes to be held and treated in the same way as circulating notes of national banking associations heretofore issued, and subject to all the provisions of law affecting such notes: *Provided*, That nothing herein contained shall be construed to modify or repeal the provisions of § 5167 of the Revised Statutes of the United States, authorizing the Comptroller of the Currency to require additional deposits of bonds or of lawful money in case the market value of the bonds held to secure the circulating notes shall fall below the par value of the circulating notes outstanding for which such bonds may be deposited as security: *And provided further*, That the circulating notes furnished to national banking associations under the provisions of this Act shall be of the denominations prescribed by law, except that no national banking association shall, after the passage of this Act, be entitled to receive from the Comptroller of the Currency, or to issue or reissue or place in circulation, more than one-third in amount of its circulating notes of the denomination of \$5: *And provided further*, That the total amount of such notes issued to any such association may equal at any time but shall not exceed the amount at such time of its capital stock actually paid in: *And provided further*, That under regulations to be prescribed by the Secretary of the Treasury any national banking association may substitute the two per centum bonds issued under the provisions of this Act

for any of the bonds deposited with the Treasurer to secure circulation or to secure deposits of public money; and so much of an Act entitled 'An Act to enable national banking associations to extend their corporate existence, and for other purposes,' approved July 12, 1882, as prohibits any national bank which makes any deposit of lawful money in order to withdraw its circulating notes from receiving any increase of its circulation for the period of six months from the time it made such deposit of lawful money for the purpose aforesaid, is hereby repealed, and all other Acts or parts of Acts inconsistent with the provisions of this section are hereby repealed.

"SEC. 13. That every national banking association having on deposit, as provided by law, bonds of the United States bearing interest at the rate of two per centum per annum, issued under the provisions of this Act, to secure its circulating notes, shall pay to the Treasurer of the United States, in the months of January and July, a tax of one-fourth of one per centum each half year upon the average amount of such of its notes in circulation as are based upon the deposit of said two per centum bonds; and such taxes shall be in lieu of existing taxes on its notes in circulation imposed by § 5214 of the Revised Statutes."

Sect. 4 of the foregoing act of 1882 placed national banks upon the same footing as other banks, and they cannot therefore, merely in view of their corporate right, sue in a Federal court. *Union Bank of Cincinnati v. Miller*, 15 Fed. 703. Said section does not oust Federal courts of the jurisdiction of suits brought by an officer of the United States, under the authority of their laws, to recover of the stockholders of an insolvent national bank money which, when recovered, is to be paid over to the Treasurer of the United States for the benefit of the creditors of the bank.

Price v. Abbott, 17 Fed. 506. Under it a national bank cannot remove a suit against it from the State court upon the ground that it is a corporation organized under the laws of the United States, thereby making the suit one arising under the laws of the United States (*Cooper v. Leather Manufacturers' Bank*, 29 Fed. 161), unless a similar suit, by or against a State bank in like situation, could be so removed. *Leather Manufacturers' Bank v. Cooper*, 120 U. S. 778. It repeals Rev. Stats. § 629, subd. 10, and disables national banks from bringing suit in the Federal courts against residents of their own State and judicial district. *Bank of Jefferson v. Fore*, 25 Fed. 209; see 35 *American Law Review*, 783. The appraisers mentioned in § 5 of said act may correct a clerical error in computing the figures on which their valuation was made, and in the result of the valuation, before the time for an appeal from their appraisal has expired. *Bank of Clarion v. Brenne-man*, 114 Penn. St. 315.

SECT. 5134. [Organization Certificate]. — "The persons uniting to form such an association shall, under their hands, make an organization certificate, which shall specifically state —

"First. *Title*. — The name assumed by such association; which name shall be subject to the approval of the Comptroller of the Currency.

"Second. *Location*. — The place where its operations of discount and deposit are to be carried on, designating the State, Territory or District, and the particular county and city, town, or village.

"Third. *Capital stock*. — The amount of capital stock and the number of shares into which the same is to be divided.

"Fourth. *Shareholders*. — The names and places of resi-

dence of the shareholders and the number of shares held by each of them.

"Fifth. *Object of certificate.* — The fact that the certificate is made to enable such persons to avail themselves of the advantages of this Title."

See the notes to §§ 5133 and 5219; *Davis v. Stevens*, 17 Blatch. 259, 20 Albany Law Journal, 490; *Chatham Bank v. Merchants' Bank*, 4 Thomp. & Cook (N. Y.), 196; *Van Allen v. Assessors*, 3 Wall. 573.

"*The place where its operations of discount and deposit are to be carried on.*" — This phrase must be construed reasonably. It does not prevent the purchase of coin by one bank at the place of business of another. *Merchants' Bank v. State Bank*, 10 Wall. 604, 651.

SECT. 5135. [Execution of Organization Certificate]. — "The organization certificate shall be acknowledged before a judge of some court of record or notary public, and shall be, together with the acknowledgment thereof, authenticated by the seal of such court or notary, transmitted to the Comptroller of the Currency, who shall record and carefully preserve the same in his office."

See the note to § 5133. A duly certified copy of the certificate of a bank's organization is admissible as evidence of its corporate existence. *Shaffer v. Hahn*, 111 N. C. 1.

SECT. 5136. [Corporate Powers]. — "Upon duly making and filing articles of association and an organization certificate, the association shall become as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power —

"First. *Seal.* — To adopt and use a corporate seal.

"Second. *Term of existence.* — To have succession for the period of twenty years from its organization, unless it is sooner dissolved according to the provisions of its articles of association, or by the act of its shareholders owning two-thirds of its stock, or unless its franchise becomes forfeited by some violation of law.

"Third. *Contracts.* — To make contracts.

"Fourth. *Suits.* — To sue and be sued, complain and defend, in any court of law and [or] equity, as fully as natural persons.

"Fifth. *Officers.* — To elect or appoint directors, and by its board of directors to appoint a president, vice-president, cashier, and other officers, define their duties, require bonds of them and fix the penalty thereof, dismiss such officers or any of them at pleasure, and appoint others to fill their places.

"Sixth. *By-laws.* — To prescribe, by its board of directors, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

"Seventh. *Incidental powers.* — To exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this Title; but no association shall transact any business except such

as is incidental and necessarily preliminary to its organization until it has been authorized by the Comptroller of the Currency to commence the business of banking."

See *Bullard v. Bank*, 18 Wall. 589; *Petri v. Commercial Nat. Bank*, 142 U. S. 644, 647; *Cadle v. Tracy*, 11 Blatch. 101; *Evansville Bank v. Metropolitan Bank*, 2 Biss. 527; *Manufacturers' Bank v. Baack*, 2 Abb. U. S. 232; 8 Blatch. 137; *St. Louis Bank v. Brinkman*, 1 Fed. 45, 47; *Town of Lyons v. Lyons Bank*, 8 Id. 369, 376; *Scott v. Pequonnock Bank*, 15 Id. 494, 499; *Eastern Townships' Bank v. Bank of St. Albans*, 22 Id. 186; *Movius v. Lee*, 24 Blatch. 291; 30 Fed. 298; *Crocker v. Marine Bank*, 101 Mass. 240; *Bank of Lyons v. Ocean Bank*, 60 N. Y. 278; *Yerkes v. Bank of Port Jervis*, 69 Id. 382; *Talmage v. Third Nat. Bank*, 91 Id. 531; *National Bank of Gloversville v. Wells*, 15 Hun, 51; *Bank of Montpelier v. Hubbard*, 49 Vt. 1; *Stephens v. Monongahela Bank*, 88 Penn. St. 157; *Higley v. Bank of Beverly*, 26 Ohio St. 75; *Fridley v. Bowen*, 87 Ill. 151; *Bank of Memphis v. Kidd*, 20 Minn. 234; *Holmes v. National Bank*, 18 S. C. 31; *Thilmany v. Iowa Paper-Bag Co.*, 108 Iowa, 335. Service of process on the cashier of a national bank, who is found in a district other than the one where the bank is located, does not confer jurisdiction upon the court of the district in which such service is made, for a national bank does not change its location to correspond with the temporary residence of one of its officers. *Main v. Second Nat. Bank*, 6 Biss. 26. A national bank may maintain a suit on behalf of its stockholders, to enjoin the collection of a tax unlawfully assessed on their shares of stock by State officers. *Hills v. Exchange Bank*, 105 U. S. 319. This provision seems to place national banks on an equal footing with natural persons, and to confer upon them the right to sue and be sued in the Federal courts, only to the same extent as such persons, and under like circumstances and conditions. *St. Louis Nat. Bank v. Allen*, 2 McCrary, 92; *Manufacturers' Nat.*

Bank v. Baack, 2 Abb. U. S. 232; 8 Blatch. 137; *Cadle v. Tracy*, 11 Blatch. 101.

A national bank has no authority under this and the following sections to take a mortgage on real estate as security for future advances. *Kansas Valley Bank v. Rowell*, 2 Dillon, 371; *Crocker v. Whitney*, 71 N. Y. 161. But unless restrained by its charter, it may perhaps take such a mortgage to secure anticipated liabilities. *Crocker v. Whitney, supra*. Where a bank loaned money and took as security an assignment and a deed of trust of real estate, it was held that the deed of trust was not void, and the bank could not be enjoined from selling thereunder. If a national bank makes a loan on real security, the security is not void, but may be enforced. *Union Bank v. Matthews*, 98 U. S. 658, reversing *Matthews v. Skinker*, 62 Mo. 329. See *Woods v. People's Bank*, 83 Penn. St. 57; *Bank of Waterloo v. Elmore*, 52 Iowa, 541; *Roebing v. First Nat. Bank*, 30 Fed. 744.

On a suit against a stockholder to enforce his liability, or a party upon his contracts with the bank, the certificate of the comptroller is conclusive as to the completeness of the organization under the laws of the United States. *Casey v. Galli*, 94 U. S. 673. As the only powers conferred upon directors are those which reside in them as a board, and when acting collectively as such, the individual consent of the majority of the members, acting separately, is not enough to ratify an unauthorized appropriation of the funds of the Bank by the cashier. *First Nat. Bank v. Drake*, 35 Kansas, 564. This section was neither repealed nor modified by the amendment to Rev. Stats. § 5198. *Continental Bank v. Folsom*, 78 Ga. 449, which case see also for a consideration of the act of July 12, 1882.

Whatever objection may exist under this section and § 5137 to the validity of a mortgage to a national bank to secure future advances, it can only be urged by the government. *Reynolds v. Crawfordsville Bank*, 112 U. S. 405; *Fritts v. Palmer*, 132 U. S. 282, 292; *Thompson v. St.*

Nicholas Bank, 146 U. S. 240, 251; Walden Nat. Bank v. Birch, 130 N. Y. 221, 228. The national bank statutes, though enabling, do not give a national bank an absolute right to retain bonds coming into its possession, by purchase, under a contract which it was without authority to make. Logan County Bank v. Townsend, 139 U. S. 67, 74. As a creditor, a national bank is bound by the decree of the insolvency court in the State in which it is located. Manufacturers' Nat. Bank v. Hall, 86 Maine, 107.

The bank may employ attorneys. Guthrie Nat. Bank v. Earl, 2 Okla. 617. This section enables the bank to purchase bonds issued by a city board of education. Newport Nat. Bank v. Newport Board of Education (Ky.), 70 S. W. 186.

Where a building was erected by a bank on leased property and the bank became insolvent and the building was not paying its fixed charges, it was within the power of the bank to convey the building to the lessor in consideration of his releasing all his claims against the bank. Brown v. Schleier, 194 U. S. 18.

The power to purchase or deal in the stock of another corporation is not expressly conferred upon national banks, nor is it an act which may be exercised as incidental to the powers expressly conferred, and, as a dealing in stock is *ultra vires*, it is without efficacy. Stock so acquired creates no liability to the creditors of the corporation whose stock was transferred. California Bank v. Kennedy, 167 U. S. 362, 369; Schofield v. State Nat. Bank, 97 Fed. 282; Concord First Nat. Bank v. Hawkins, 174 U. S. 364, 368. The bank may plead *ultra vires*. First Nat. Bank v. American Nat. Bank, 173 Mo. 153. See Union Nat. Bank v. Touzalin Imp. Co. (Neb.), 95 N. W. 489. The reasons which disqualify a national bank from investing its money in stocks are quite as obvious when the other corporation is a national bank as in the case of other corporations. Concord First Nat. Bank v. Hawkins, 174 U. S. 364, 368. The court says, in Robinson v. Southern

Nat. Bank, 180 U. S. 295, 309: "We think there is a presumption in such cases against any intention on the part of the lending bank to become an owner of the collateral shares." See, generally, *California Nat. Bank v. Thomas*, 171 U. S. 441, 444; *Auten v. U. S. Nat. Bank*, 174 Id. 125, 148; *Thilmany v. Iowa Paper-Bag Co.*, 108 Iowa, 335. But while by implication a bank is prohibited from dealing in stock, it may take stock in payment or compromise of a doubtful debt, in order to avoid loss, and with a view to convert the stock into money. *First Nat. Bank v. Exchange Bank*, 92 U. S. 122. The implication is that a national bank is prohibited from loaning money on real estate. What is so implied is as effectual as if it were so expressed. But a bank is not precluded from enforcing the collection of a note executed by A. to B., and secured by a deed of trust of lands, the deed being in effect a mortgage with a power of sale annexed, the money for which the note was given being loaned to B., who assigned the note and deed to the bank. *Nat. Bank v. Matthews*, 98 U. S. 624; *National Bank v. Whitney*, 103 Id. 99.

Clause 2. *Chemical Nat. Bank v. Hartford Deposit Co.*, 161 U. S. 1, 4.

Clause 3. The power to make contracts does not enable a national bank to make a contract which is illegal by the law of the State where the contract is made. *Chipman v. McClellan*, 159 Mass. 363, 371; *McClellan v. Chipman*, 164 U. S. 347.

Clause 4. The president of the bank may bind it by employing an attorney at law to bring or defend suits by or against it. *Guthrie Nat. Bank v. Earl*, 2 Okl. 617.

Clause 5. When a course of business is not shown implying authority in the president to draw checks in the bank's name, he has no power merely by virtue of his office to so draw checks against its account kept with another bank. *Putnam v. United States*, 162 U. S. 687, 713. Directors are not liable for the bank's losses, if there is no fraud or gross negligence on their part; and the fact

that they do not require a bond from the cashier is a matter within their discretion, and not necessarily negligence. *Robinson v. Hall*, 59 Fed. 648.

Clause 7. *Briggs v. Spaulding*, 141 U. S. 132, 145; *Interstate Nat. Bank v. Ferguson*, 48 Kansas, 732, 739. Although the power to borrow money or give notes is not expressly given by the Act, yet all incidental powers necessary to carry on the business of banking are impliedly granted, and a national bank may, in certain circumstances, become a temporary borrower of money. *Western Nat. Bank v. Armstrong*, 152 U. S. 346, 351. The cashier, by reason of his official position, cannot bind the bank as a mere accommodation indorser. *Flannagan v. California Nat. Bank*, 56 Fed. 959; see *Ellerbe v. National Exchange Bank*, 109 Mo. 445.

"Discounting and negotiating promissory notes." — This expression contemplates loans and discounts as understood in commercial law, and according to the known usage and practice of banks. *Merchants' Nat. Bank v. Sevier*, 14 Fed. 662. To discount a note is to deduct the interest *in presenti*, and pay over in money the face value of the note. To negotiate a promissory note or bill of exchange is either to buy or sell it. *Seligman v. Charlottesville Nat. Bank*, 3 Hughes, 647.

A national bank is not authorized to discount a note which stipulates for the payment of an attorney's fee of ten per cent on the amount due if suit is brought to enforce payment for the use of the attorney bringing the suit. *Merchants' Nat. Bank v. Sevier*, *supra*. A national bank is authorized to guarantee by indorsement the obligation of a borrower, and such indorsement made by one of its directors and the vice-president is presumed to have been authorized (*People's Bank v. National Bank*, 101 U. S. 181), but not to guarantee the obligation of one who has made a deposit of collateral security with the bank. It may loan money on such security, but not its credit. *Seligman v. Charlottesville Nat. Bank*, *supra*; *Johnson v.*

Same, 3 Hughes, 657. A bank may make a loan, taking the stock of another bank as collateral security (*National Bank v. Case*, 99 U. S. 628, 633), or of another corporation. *Shoemaker v. National Mechanics' Bank*, 2 Abb. U. S. 416; *Pittsburg Locomotive Works v. State Nat. Bank*, 21 Int. Rev. Rec. 349; *Canfield v. State Bank*, *Thompson's Nat. Bank Cases*, 312. It may take, hold, and sue upon coupons issued with and annexed to town bonds payable to bearer, and separated from the bonds (*Bank of North Bennington v. Bennington*, *Browne's N. B. Cas.* 437), and upon coupons attached to sealed bonds issued by a town in aid of a railroad. *First Nat. Bank v. Bennington*, 16 Blatch. 53.

The words "by discounting and negotiating promissory notes, drafts, bills of exchange," &c., do not limit the mode of exercising the incidental powers granted, but limit the kind of banking which is authorized by the bank. *Shinkle v. First Bank of Ripley*, 22 Ohio St. 516. A bank may dispose of its right in coin which it holds in pledge (*Merchants' Bank v. State Bank*, 10 Wall. 604), while dealing in checks is a part of its usual business. *Bank of Rochester v. Harris*, 108 Mass. 514. None of the five distinct grants of power enumerated in the seventh subdivision of this section is a limitation upon any other. *Shoemaker v. National Mechanics' Bank*, 2 Abb. (U. S.) 416.

There is conflict of authority upon the question whether the right to "discount and negotiate" promissory notes includes the right to buy them, yet as such a contract is only *ultra vires*, and not expressly prohibited, the maker or indorser cannot defend on the ground that the bank has not a good title. *Prescott Nat. Bank v. Butler*, 157 Mass. 548; *Nicholson v. New Castle Nat. Bank*, 92 Ky. 251. The bank may, however, itself defend on the ground that a contract made by it is *ultra vires*. *Dresser v. Traders' Nat. Bank*, 165 Mass. 120. The power to receive deposits necessarily carries with it the power to contract as to the parties to whom the deposits shall be repaid. *Sykes v. First Nat. Bank*, 2 So. Dak. 242, 259.

Under the last clause of this section, the lease of real estate at a high rental by a national bank, before receiving the comptroller's certificate, for a term of five years, determinable at the end of any year by either party, to be used as its banking office, does not bind the bank either as a contract or by estoppel, and nothing can be recovered against the bank beyond what it has actually received and enjoyed. *McCormick v. Market Bank*, 165 U. S. 538, 545, 553; 162 Ill. 100. See *First Nat. Bank v. Armstrong*, 42 Fed. 193; *Bond v. Terrell Manuf. Co.*, 82 Texas, 309, 313.

The procurement of a signature to a note for another bank in order that it may lend money to a third person, and a representation that the signature is genuine are outside the powers of a national bank and subject it to no liability where the note turns out to be a forgery. *Commercial Nat. Bank v. First Nat. Bank (Texas)*, 80 S. W. 601. A national bank has no power to guarantee that a draft by A. upon B. will be paid. *First Nat. Bank v. Am. Nat. Bank*, 173 Mo. 153.

The President of a national bank who has the actual management of its affairs is authorized to procure the discount of its paper and thereby to bind the bank *Hanover Nat. Bank v. First Nat. Bank*, 109 Fed. 421. The cashier of a national bank may, for the purpose of collecting a debt due the bank, enter into a contract in behalf of the bank to pay one a commission for procuring a purchaser for real estate held by the bank as security for the debt. *First Nat. Bank v. Ratliff (Texas)*, 76 S. W. 591.

A plea of *ultra vires* is good. *Metropolitan Stock Exch. v. Lyndonville Nat. Bank (Vt.)*, 57 Atl. 101. See 27 *American Law Review*, 448.

SECT. 5137. [Real Estate]. — "A national banking association may purchase, hold, and convey real estate for the following purposes, and for no others :

"First. Such as shall be necessary for its immediate accommodation in the transaction of its business.

"Second. Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.

"Third. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

"Fourth. Such as it shall purchase at sales under judgments, decrees, or mortgages held by the association, or shall purchase to secure debts due to it.

"But no such association shall hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years."

See preceding note; *First Bank of Charlotte v. Exchange Bank of Baltimore*, 92 U. S. 122; *Robinson v. Bank of New Berne*, 58 How. Pr. 306; *Stephens v. Monongahela Bank*, 88 Penn. St. 157; *Richards v. Kountze*, 4 Neb. 200; *Scofield v. State Bank of Lincoln*, 9 Id. 316; *Wroten's Assignee v. Armat*, 31 Gratt. 228. Only the government can dispute the bank's right to acquire and hold real property. *Reynolds v. Crawfordsville Bank*, 112 U. S. 405; *Fortier v. New Orleans Bank*, Id. 439; *Wherry v. Hale*, 77 Mo. 20. A mortgage executed to a national bank as collateral security for an existing indebtedness, and for such as the mortgagor might thereafter incur, is enforceable. *National Bank v. Whitney*, 103 U. S. 99. Only the government can object to the provision concerning future advances. Id. *Contra*, *Kansas Valley Bank v. Rowell*, 2 Dillon, 371. A bank may sell real estate owned by it, and take back a mortgage to secure the purchase-money. *New Orleans Bank v. Raymond*, 29 La. Ann. 355. It may take a mortgage of real estate by way of security for an indebtedness previously contracted and evidenced by new notes of the mortgagor. *Farmers' & Merchants' Bank v.*

Wallace (Ohio), 12 N. E. Rep. 439, 445; *Matthews v. Abbott*, 2 Haskell, 289; *Worcester Bank v. Cheeney*, 87 Ill. 602; *Merchants' Bank v. Mears*, 10 Chi. Leg. News, 180. It may purchase at sheriff's sale land mortgaged to it in good faith as security for a debt previously contracted. *Heath v. Bank of Lafayette*, 70 Ind. 106. And where a bank purchased real estate mortgaged to it, and, in order to secure the same debt, it purchased other real estate not mortgaged to it, the title to that which it was authorized to purchase was not affected. And though it were otherwise, the debtor could not take advantage of it. *Reynolds v. Crawfordsville Nat. Bank*, *supra*. A mortgage to a national bank to secure a present loan by the discount of commercial paper in the usual course of business is not void, but only voidable at the election of the government. *Graham v. Bank of New York*, 32 N. J. Eq. 804. But a real estate mortgage executed to a bank officer to secure a loan made concurrently therewith to the mortgagor by the bank is void. *Fridley v. Bowen*, 87 Ill. 151. An indorsement by a married woman charging her estate with the payment of the note, is such a security as a national bank may take. *Third Nat. Bank v. Blake*, 73 N. Y. 260. As to other property likewise only the government can dispute the bank's right thereto, as where the bank sues for the amount of coupons payable to bearer, it not appearing how they were acquired. *Lyons v. Lyons Bank*, 19 Blatch. 279.

Such power to hold real estate includes the power to lease it. *Brown v. Schleier*, 118 Fed. 981. A borrower is liable to repay money taken in violation of this section, and cannot prevent the enforcement of the security received by the bank. *Lantry v. Wallace*, 182 U. S. 536, 551; *State Nat. Bank v. Vicroy (Ky.)*, 70 S. W. 183. A national bank, though forbidden to take mortgages on realty, may be substituted to the rights of a surety who has taken such a mortgage. *McGoffin v. Boyle Nat. Bank (Ky.)*, 69 S. W. 702. See *Riesterer v. Horton Land Co. (Mo.)*, Id. 238.

These statutes were extended to Porto Rico by virtue of 31 St. 77, § 14. 23 A. G. Op. 169.

SECT. 5138. [Amount of Capital Stock Required]. — “No association shall be organized with a less capital than \$100,000, except that banks with a capital of not less than \$50,000 may, with the approval of the Secretary of the Treasury, be organized in any place the population of which does not exceed 6,000 inhabitants. No association shall be organized in a city the population of which exceeds 5,000 persons with a capital of less than \$200,000.”

Amended by the Act of March 14, 1900, § 10, stated under § 5133, *supra*.

SECT. 5139. [Shares of Stock]. — “The capital stock of each association shall be divided into shares of one hundred dollars each, and be deemed personal property, and transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies, or security of the existing creditors of the association shall be impaired.”

See the note to § 5151, *infra*; Van Allen v. Assessors, 3 Wall. 573; Dickinson v. Central Bank, 129 Mass. 279; Magruder v. Colston, 44 Md. 349; Hale v. Walker, 31 Iowa, 344. This section and Rev. Stats. § 5151, for the purposes of construction, should be considered together. Davis v. Stevens, 17 Blatch. 259; 20 Alb. L. J. 490. The

power to prescribe the manner of transferring shares of stock can go only to the extent of prescribing conditions essential to the protection of the association against fraudulent transfers, or such as may be designed to evade the just responsibility of the stockholder. Under the pretence of exercising this power, the association cannot clog the transfer with useless restrictions, or make it dependent upon the consent of the directors or other stockholders. *Johnston v. Laffin*, 103 U. S. 800; 5 Dillon, 65; 17 Alb. L. J. 146. If a stockholder deliver his certificate to one to whom he has made a sale of his stock, and authorized him, or any one else, to transfer them on the books of the bank, the transaction as between the parties is complete. *Johnston v. Laffin, supra*. If no mode of transferring shares of stock has been provided by the bank, it is bound to recognize a transfer thereof made by a foreign executor, such transfer being valid under the laws of the State in which the bank is situated. *Hobbs v. Western Nat. Bank*, 8 W. N. C. 131.

A by-law provided that shares of stock should be transferable on the books of the bank, in person or by attorney, only on the surrender of the certificates. The bank allowed a transfer to be made without requiring such surrender; and it was held bound to transfer to the transferee, who produced the certificates with a properly executed power of attorney, although it had no notice of the last transfer. *Bank v. Lanier*, 11 Wall. 369. And where the by-laws provided that shares of stock should be transferred only on the books of the association, it was held that one to whom a transfer had been made on the back of the certificate, was entitled to damages for the refusal of the bank to transfer the shares, although there had been an attachment thereof between the time of transfer and the notice thereof given the bank. *Hazard v. National Exchange Bank*, 26 Fed. 94; *Continental Nat. Bank v. Eliot Nat. Bank*, 7 Id. 369. See *Scott v. Pequonock Nat. Bank*, 15 Id. 494.

A provision in the charter and by-laws, and a condition in a certificate of stock, of a national bank, forbidding the transfer of stock where the stockholder is indebted to the bank, is void and creates no lien which the bank can enforce by refusing to transfer the stock to a holder for value in good faith. *Third Nat. Bank v. Buffalo German Ins. Co.*, 193 U. S. 581; see also *Bullard v. The Bank*, 18 Wall. 589; 48 L. R. A. 108, note; 57 Am. State Rep. 395, note.

A bank may waive, by the acts of its cashier, the provision of a State statute to the effect that bank stock shall be transferable only as the by-laws provide, and that no stockholder shall transfer his stock until his debt to the bank is discharged or secured to the satisfaction of the directors. *National Bank v. Watsontown Bank*, 105 U. S. 217. If a bank has no by-law regulating the transfer of stock, a record thereof made on the stock book by its cashier vests in the vendee a title to the stock. *Id.*

As between the vendor and the vendee of national bank stock, the title passes by a delivery and the execution of a power of attorney to transfer it. *Id.*; and see *Doty v. Larimore Nat. Bank*, 3 No. Dak. 9.

A stockholder, who is also a creditor of a bank, cannot cancel or reduce his assessment by offsetting his claim against the bank. *Hobart v. Gould*, 8 Fed. 57.

Those persons only have the rights and liabilities of stockholders who appear to be such as are registered on the books of the association, the stock being transferable only in that way. No person becomes a shareholder, subject to such liabilities and succeeding to such rights, except by such transfer; until such transfer the prior holder is the stockholder for all the purposes of the law. *Richmond v. Irons*, 121 U. S. 27, 58. If a person allows a transfer to be made to him, upon the books of a bank, of shares of stock therein, even though such transfer is made solely as security for a debt due, the transferee becomes individually liable for all contracts of the bank to the extent prescribed by

the act. *Moore v. Jones*, 3 Woods, 53. A purchaser of stock in a national bank, who for the purpose of concealing his ownership, and escaping individual responsibility, causes it to be transferred to another person pecuniarily irresponsible, is, so long as he remains the actual owner, a shareholder, within the meaning of this section and Rev. Stats. § 5151. *Davis v. Stevens*, 17 Blatch. 259. If an executor, under a decree of court, transfers shares of bank stock belonging to the estate to the residuary legatee, the transfer is valid, and the estate is not liable to an assessment on the stock, notwithstanding the remaining assets in the executor's hands were not sufficient to pay the legacies. *Witters v. Sowles*, 32 Fed. 130.

National banks may amend their articles of association when no conflict with the statutes results, and such an amendment providing for an increase in the number of directors is not inconsistent with this section. 17 A. G. Op. 288. One who sells his stock in a national bank in good faith, notifies the bank of the sale, requests the proper transfer and entries to be made, and gives the bank officers full authority to make them, is not thereafter liable to assessment as a shareholder. *Whitney v. Butler*, 118 U. S. 655; *Briggs v. Spaulding*, 141 U. S. 132, 153; *Hayes v. Shoemaker*, 39 Fed. 319; *Hayes v. Yawger*, Id. 912; *Young v. McKay*, 50 Id. 394. A shareholder is to be distinguished from one who holds the stock of a national bank as a pledge or as collateral security; such holder is not liable to assessment as a shareholder. *Pauly v. State Loan and Trust Co.*, 165 U. S. 606; *Beal v. Essex Savings Bank*, 67 Fed. 816; *Sykes v. Holloway*, 81 Id. 432. National bank shares cease, under § 7 of the Act of July 12, 1882, stated under § 5133, *supra*, to be transferable when the bank proceeds to wind up its affairs at the end of the original period for which it was organized. *Richards v. Attleborough Nat. Bank*, 148 Mass. 187. Unpaid subscriptions are assets, impressed in equity with a trust *sub modo*, in the sense that neither the stockholders nor the corporation can

misappropriate such subscriptions so far as creditors are concerned. *Peters v. Bain*, 133 U. S. 670, 691; *Clark v. Bever*, 139 U. S. 96, 113; *Fogg v. Blair*, Id. 118; *Stuart v. Hayden*, 72 Fed. 402.

A controversy as to which of certain claimants had the superior equity to shares of stock, with this Act only collaterally involved, does not raise a Federal question. *Leyson v. Davis*, 170 U. S. 36, 41. The intent with which a stockholder transfers his bank shares to a third person is a material element, especially when coupled with knowledge or reasonable belief of the condition of the bank. *Stuart v. Hayden*, 169 U. S. 1, 7. See *Matteson v. Dent*, 176 U. S. 521, 523; *Robinson v. Southern Nat. Bank*, 180 Id. 295, 304; *Earle v. Carson*, 188 Id. 42, 107 Fed. 639.

SECT. 5140. [Payment of Capital Stock]. — “At least fifty per centum of the capital stock of every association shall be paid in before it shall be authorized to commence business; and the remainder of the capital stock of such association shall be paid in installments of at least ten per centum each, on the whole amount of the capital, as frequently as one installment at the end of each succeeding month from the time it shall be authorized by the Comptroller of the Currency to commence business; and the payment of each installment shall be certified to the Comptroller, under oath, by the president or cashier of the association.”

See note, § 5220, *infra*; *Van Allen v. Assessors*, 3 Wall. 573; *McDonald v. Williams*, 174 U. S. 397, 406; *Eaton v. Pacific Bank*, 144 Mass. 260; *Wright v. Merchants' Bank*, 1 Flippin, 568; *Stanton v. Wilkeson*, 8 Ben. 357.

SECT. 5141. [Enforcing Payment of Capital]. — “Whenever any shareholder, or his assignee, fails to pay any in-

stallment on the stock when the same is required by the preceding section to be paid, the directors of such association may sell the stock of such delinquent shareholder at public auction, having given three weeks' previous notice thereof in a newspaper published and of general circulation in the city or county where the association is located, or if no newspaper is published in said city or county, then in a newspaper published nearest thereto, to any person who will pay the highest price therefor, to be not less than the amount then due thereon, with the expenses of advertisement and sale; and the excess, if any, shall be paid to the delinquent shareholder. If no bidder can be found who will pay for such stock the amount due thereon to the association, and the cost of advertisement and sale, the amount previously paid shall be forfeited to the association, and such stock shall be sold as the directors may order, within six months from the time of such forfeiture, and if not sold it shall be cancelled and deducted from the capital stock of the association."

[*Restoration of Capital*]. — "If any such cancellation and reduction shall reduce the capital of the association below the minimum of capital required by law, the capital stock shall, within thirty days from the date of such cancellation, be increased to the required amount; in default of which a receiver may be appointed, according to the provisions of section fifty-two hundred and thirty-four, to close up the business of the association."

See the note to § 5140.

SECT. 5142. [*Increase of Capital Stock*]. — "Any association formed under this Title may, by its articles of association, provide for an increase of its capital from time to time,

as may be deemed expedient, subject to the limitations of this Title. But the maximum of such increase to be provided in the articles of association shall be determined by the Comptroller of the Currency; and no increase of capital shall be valid until the whole amount of such increase is paid in, and notice thereof has been transmitted to the Comptroller of the Currency, and his certificate obtained specifying the amount of such increase of capital stock, with his approval thereof, and that it has been duly paid in as part of the capital of such association."

See *Delano v. Butler*, 118 U. S. 634; *Eaton v. Pacific Bank*, 144 Mass. 260; *Winters v. Armstrong*, 37 Fed. 508. Even before the passage of the following Act of 1886, unless such right was expressly conferred on the directors by the charter, the stockholders alone had the right to authorize an increase in the capital stock. *Eidman v. Bowman*, 58 Ill. 444. See also *Gray v. Portland Bank*, 3 Mass. 365; *Morse on Banks and Banking*, § 127. In *Eidman v. Bowman*, *supra*, the court says: "Are all of the powers conferred on the company delegated to them [directors] by their election and admission to their office. . . . It would seem that the management and transaction of all business for which the company was created, and the general affairs of the corporation, devolve upon, and may clearly be exercised by them; and there are other powers that are as clearly reserved to the shareholders." The last clause of this section was intended to secure the actual payment of the stock subscribed, and to prevent watering of stock; it is violated by issuing new stock of the exact amount that has been paid in. *Aspinwall v. Butler*, 133 U. S. 595, 608; *Pacific Nat. Bank v. Eaton*, 141 U. S. 227; *Thayer v. Butler*, *Id.* 234. The action of the Comptroller of the Currency in approving an increase of a national bank's capital, and making certificate that

the amount of the increase has been paid in as part of its capital, is so far a judicial act that it cannot be collaterally attacked in a suit to recover assessments from shareholders. *Latimer v. Bard*, 76 Fed. 536, 540.

When the stockholders decide, with the approval of the Comptroller, to increase the capital stock, by the addition of a named amount, the clause here that "no increase shall be valid until," &c., creates no condition, express or implied, that shares subscribed and paid for in full are not valid unless the entire amount of the proposed increase is subscribed and paid for in full. *Scott v. Latimer*, 89 Fed. 843, 848; *Scott v. Deweese*, 181 U. S. 202, 213. An increase of the capital stock, based on a fictitious value of assets, and on notes given by the directors with an understanding that they were not to be paid, violates this section, and the directors who participate in this fraud are liable for losses resulting to the creditors. *Cockrill v. Abeles*, 86 Fed. 505, 509.

The Act of May 1, 1886, ch. 73 (24 St. 18), provides —

"That any national banking association may, with the approval of the Comptroller of the Currency, by the vote of shareholders owning two-thirds of the stock of such association, increase its capital stock, in accordance with existing laws, to any sum approved by the said Comptroller, notwithstanding the limit fixed in its original articles of association and determined by said Comptroller; and no increase of the capital stock of any national banking association either within or beyond the limit fixed in its original articles of association shall be made except in the manner herein provided.

"SEC. 2. That any national banking association may change its name or the place where its operations of discount and deposit are to be carried on, to any other place within the same State, not more than thirty miles distant

with the approval of the Comptroller of the Currency, by the vote of shareholders owning two-thirds of the stock of such association. A duly authenticated notice of the vote and of the new name or location selected shall be sent to the office of the Comptroller of the Currency; but no change of name or location shall be valid until the Comptroller shall have issued his certificate of approval of the same.

"SEC. 3. That all debts, liabilities, rights, provisions, and powers of the association under its old name shall devolve upon and inure to the association under its new name.

"SEC. 4. That nothing in this act contained shall be so construed as in any manner to release any national banking association under its old name or at its old location from any liability, or affect any action or proceeding in law which said association may be or become a party or interested."

SECT. 5143. [Reduction of Capital Stock]. — "Any association formed under this Title may, by the vote of shareholders owning two-thirds of its capital stock, reduce its capital to any sum not below the amount required by this Title to authorize the formation of associations, but no such reduction shall be allowable which will reduce the capital of the association below the amount required for its outstanding circulation, nor shall any such reduction be made until the amount of the proposed reduction has been reported to the Comptroller of the Currency and his approval thereof obtained."

See *Morrison v. Price*, 23 Fed. 217, 219; *Eaton v. Pacific Bank*, 144 Mass. 260; *Cogswell v. Second Nat.*

Bank (Conn.), 56 Atl. 574. Where a national bank reduces its capital stock, it cannot retain as a surplus fund or for any other purpose any portion of the money which it receives from the stock which is retired. *Seeley v. New York Exchange Bank*, 1 Thomp. N. B. Cas. 804.

When the capital of a national bank becomes impaired, the stockholders cannot, upon voting to reduce the capital, take the depreciated assets and place them in the hands of trustees for their own benefit. *McCann v. First Nat. Bank*, 131 Ind. 95.

SECT. 5144. [Qualifications of Voters at Elections]. — “In all elections of directors, and in deciding all questions at meetings of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him. Shareholders may vote by proxies duly authorized in writing ; but no officer, clerk, teller, or bookkeeper of such association shall act as proxy ; and no shareholder whose liability is past due and unpaid shall be allowed to vote.”

See *Van Allen v. Assessors*, 3 Wall. 573. The liability which prevents a shareholder from voting is only the non-payment of his subscription as such shareholder. *United States v. Barry*, 36 Fed. 246.

SECT. 5145. [Number and Election of Directors]. — “The affairs of each association shall be managed by not less than five directors, who shall be elected by the shareholders at a meeting to be held at any time before the association is authorized by the Comptroller of the Currency to commence the business of banking, and afterward at meetings to be held on such day in January of each year as is specified therefor in the articles of association. The directors shall hold office for one year, and until their successors are elected and have qualified.”

See *Bank of Lyons v. Ocean Bank*, 60 N. Y. 278; *Briggs v. Spaulding*, 141 U. S. 132, 143; note to § 5139. This section and the five following are framed to embody the provisions of §§ 9, 10, of the Act of 1864, the order and expression being modified without intention to change the substance. 2 Commissioners' Draft of U. S. Rev. Stats. 2461. This section does not prohibit the resignation of a director during the year. The apparent purpose of it is to make the term of office conform to the time of the new election, and not to absolutely require every director to serve the full term. An oral resignation made to the president of the board is good. *Movius v. Lee*, 24 Blatch. 291; 30 Fed. 298.

SECT. 5146. [Qualifications of Directors]. — "Every director must, during his whole term of service, be a citizen of the United States, and at least three-fourths of the directors must have resided in the State, Territory, or District in which the association is located for at least one year immediately preceding their election, and must be residents therein during their continuance in office. Every director must own, in his own right, at least ten shares of the capital stock of the association of which he is a director. Any director who ceases to be the owner of ten shares of the stock, or who becomes in any other manner disqualified, shall thereby vacate his place."

See note above to § 5133; *Concord First Nat. Bank v. Hawkins*, 174 U. S. 364, 368; *Rich v. State Bank of Lincoln*, 7 Neb. 201. The purpose of this section obviously is to require the office of director to be kept in the hands of those who are personally and pecuniarily interested in the affairs of the bank. When a director bargains for a sale of his stock and resigns his position, so far as he can do so, to the president of the bank, in his place as such

president, he ceases to be a director. *Movius v. Lee*, 24 Blatch. 291 ; 30 Fed. 298.

Every director must own in his own right, during his whole term of service, at least ten shares of stock, otherwise he cannot become or continue a director. *Finn v. Brown*, 142 U. S. 56, 68. As a director must thus be a stockholder, a judge who is a director of a national bank is disqualified from presiding at the trial of a suit by or against the bank. *Williams v. City Nat. Bank* (Tex. Civ. App.), 27 S. W. 147. A State statute making it a felony for a bank officer to receive deposits when he knows it to be insolvent, may apply to a national bank. *State v. Fields*, 98 Iowa, 748.

SECT. 5147. [*Oaths of Directors*].— “ Each director, when appointed or elected, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such association, and will not knowingly violate, or willingly permit to be violated, any of the provisions of this Title, and that he is the owner in good faith, and in his own right, of the number of shares of stock required by this Title, subscribed by him, or standing in his name on the books of the association, and that the same is not hypothecated or in any way pledged as security for any loan or debt. Such oath, subscribed by the director making it, and certified by the officer before whom it is taken, shall be immediately transmitted to the Comptroller of the Currency, and shall be filed and preserved in his office.”

See *Rich v. State Bank of Lincoln*, 7 Neb. 201 ; *Movius v. Lee*, *above* ; *Lockwood v. National Bank*, 9 R. I. 308.

“ *Shall take an oath.* ”— A notary public has authority to administer the oath provided for by this section. An oath hereunder is not invalidated because the notary in

certifying the fact that it had been taken erroneously used the word "county" when he should have used "city," and used the seal of the bank instead of his own official seal. *United States v. Neale*, 14 Fed. 767.

"Owner in good faith, and in his own right." — An irrevocable power of attorney given by a director, whereby he constituted the person named therein his attorney for the purposes therein set forth, covering an indebtedness from the director to the person who held such power and binding the shares of stock in a national bank held by him, prevents such director from being an owner in good faith, &c. *United States v. Neale, supra*.

An action by a stockholder will not lie against the president and directors for their neglect and mismanagement of the affairs of the bank whereby insolvency ensued and the stock became worthless. *Conway v. Halsey*, 44 N. J. Law, 462.

SECT. 5148. [Vacancies in Board of Directors]. — "Any vacancy in the board shall be filled by appointment by the remaining directors, and any director so appointed shall hold his place until the next election."

SECT. 5149. [Failure to Hold Annual Election]. — "If, from any cause, an election of directors is not made at the time appointed, the association shall not for that cause be dissolved, but an election may be held on any subsequent day, thirty days' notice thereof in all cases having been given in a newspaper published in the city, town, or county in which the association is located; and if no newspaper is published in such city, town, or county such notice shall be published in a newspaper published nearest thereto. If the articles of association do not fix the day on which the election shall be held, or if no election is held on the day fixed, the day for the election shall be designated by

the board of directors in their by-laws, or otherwise; or if the directors fail to fix the day, shareholders representing two-thirds of the shares may do so."

SECT. 5150. [**President shall be a Director**]. — "One of the directors, to be chosen by the board, shall be the president of the board."

SECT. 5151. [**Personal Liability of Shareholders**]. — "The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares, except that shareholders of any banking association now existing under State laws having not less than five millions of dollars of capital actually paid in and a surplus of twenty per centum on hand, both to be determined by the Comptroller of the Currency, shall be liable only to the amount invested in their shares; and such surplus of twenty per centum shall be kept undiminished, and be in addition to the surplus provided for in this Title; and if at any time there is a deficiency in such surplus of twenty per centum such association shall not pay any dividends to its shareholders until the deficiency is made good; and in case of such deficiency the Comptroller of the Currency may compel the association to close its business and wind up its affairs under the provisions of chapter four of this Title."

See notes to §§ 5139, 5205, 5220 and 5234; *Morrison v. Price*, 23 Fed. 217; *Price v. Abbott*, 17 Id. 506; *Witters v. Sowles*, 25 Id. 168; *Brown v. Finn*, 34 Id. 124; *Gatch v. Fitch*, Id. 566. *Wright v. Merchants' Bank*, 1 Flippin, 568; *Delano v. Butler*, 118 U. S. 634; *Aspinwall v. Butler*,

133 Id. 595; 33 Fed. 217; *Thayer v. Butler*, 141 U. S. 234; *Butler v. Eaton*, Id. 240; *Johnson v. Laffin*, 5 Dillon, 65; *Eaton v. Pacific Bank*, 144 Mass. 260; *Bank of Lyons v. Ocean Bank*, 60 N. Y. 278; *Church v. Ayer*, 80 Fed. 543; *Wickham v. Hull*, 102 Iowa, 469.

The Comptroller of the Currency has constitutionally the power to appoint a receiver for a defaulting or insolvent national bank, or to call for a ratable assessment upon the stockholders, without a previous judicial ascertainment of the necessity for the appointment of the receiver and of the existence of the liabilities of the bank. *Bushnell v. Leland*, 164 U. S. 684, 685. This statutory liability is not in favor of the bank, but of its creditors; it does not arise until the bank becomes insolvent. *Wickham v. Hull* (Iowa), 71 N. W. Rep. 352, 353. This liability of the shareholders is an asset of the bank in the nature of a guaranty fund to be resorted to in the event of its insolvency. *Irons v. Manufacturers' Bank*, 21 Fed. 197. The obligation of stockholders to pay assessments is created by the statute and implied from their express contract to take and pay for their shares. *McDonald v. Thompson*, 184 U. S. 71, 73, 74; *Aldrich v. Campbell*, 97 Fed. 663. The liability is a contractual one. *Aldrich v. McClaine*, 106 Id. 791, 792. The liability is that of principals and not of sureties, and is not a promise to answer for the debt of another under the Statute of Frauds. *Hobart v. Johnson*, 8 Fed. 493. It is several and is not affected by the failure of the other shareholders to pay, and the Comptroller's assessment of a sufficient percentage concludes the amount. *United States v. Knox*, 102 U. S. 422; *Casey v. Galli*, 94 Id. 673. No one shareholder need make good the failure of another to pay his assessment, and a certain sum assessed is considered, for the purpose of making another assessment, as if all the first one had been made. *Lease v. Barschall*, 106 Fed. 762. A married woman is liable to assessment whether her stock was bought by her or bequeathed to

her, at least in States where she is at liberty to contract. *Witters v. Sowles*, 32 Fed. 767; 35 Id. 640; 38 Id. 700; 39 Id. 403; *Kerr v. Urie* (Md.), 37 Atl. Rep. 789; *Keyser v. Hitz*, 2 Mackey (D. C.), 473.

As a general rule, the owner of the stock, in whose name it stands on the bank's books, remains liable for an assessment so long as it so stands in his name. There are exceptions to this general rule, some of which are the following:

1. A transfer, fraudulently or collusively made to avoid paying an assessment, will be disregarded, and the real owner held liable. *Rankin v. Fidelity Trust Co.*, 189 U. S. 242, 246. This liability is fixed by the shareholder's knowledge of the bank's existing or imminent insolvency, and cannot be escaped by his transfer of his shares. *Bowden v. Johnson*, 107 U. S. 251; *Whitney v. Butler*, 118 Id. 655 (reversing *Price v. Whitney*, 28 Fed. 297); *Irons v. Manufacturers' Bank*, 17 Id. 308; 27 Id. 591; *Davis v. Stevens*, 17 Blatch. 259; *Bowden v. Santos*, 1 Hughes, 158. The delivery of the certificates to the president of the bank in any other capacity than as president does not release the shareholder. *Richmond v. Irons*, 121 U. S. 27, 58. So a transfer of bank stock to a person without his knowledge or consent does not make him a stockholder. *Keyser v. Hitz*, 133 U. S. 139. A transfer by a stockholder of his stock to one less responsible than himself for the purpose of escaping his liability to assessment is fraudulent and voidable, and may be set aside at suit of the receiver of the bank. *Stuart v. Hayden*, 72 Fed. 402. As to the set-off of deposits, see 30 Am. L. Rev. 945.

2. Neglect by the bank officers to make entry of a transfer duly delivered to them extinguishes the liability as stockholder of the transferrer.

3. When the pledgee of stock, for the purpose of protecting his contract, causes the stock to be recorded in his name as "pledgee," such registry is not a transfer to

the pledgee as owner, and he is not liable although the pledgor may continue to be so. *Matteson v. Dent*, 176 U. S. 521, 530; *Rankin v. Fidelity Ins. Co.*, 189 Id. 242. The same is true of a trustee whose trust appears on the books of the bank. *Wells v. Larrabee*, 36 Fed. 866; *Davis v. Essex Baptist Society*, 44 Conn. 582.

A pledgee of stock, who sells it in accordance with the terms of the pledge and becomes the purchaser, but never has it transferred on the bank's books, is not liable as a shareholder for an assessment made on the bank's insolvency. *Robinson v. Southern Nat. Bank*, 94 Fed. 964.

One who holds stock in pledge or as collateral security, and who appears on the books of the corporation as the owner, is liable: *National Bank v. Case*, 99 U. S. 628; *Moore v. Jones*, 3 Woods, 53; *Hale v. Walker*, 81 Iowa, 344; *Pauly v. State Loan & Trust Co.*, 165 U. S. 606, 623; *Horton v. Mercer*, 71 Fed. 153. Although the loan has since been paid, and the certificate surrendered with an executed power of attorney for transfer. *Bowdell v. Farmers', &c. Bank*, 14 Bankers' Mag. 387. But not if he never held himself out as the owner. *Anderson v. Philadelphia Warehouse Co.*, 111 U. S. 479; 4 Fed. 130. See also 68 Am. So. R. 545, *note*.

Those who hold themselves out as owners of stock are also liable whether they own stock or not. *Case v. Small*, 4 Woods, 78; 10 Fed. 722. And so are the transferees of shares to whom the bank has issued a certificate not recorded in accordance with Rev. Stats. § 5139. *Laing v. Burley*, 101 Ill. 591; *Johnston v. Laffin*, 103 U. S. 800; *Weyer v. Franklin Nat. Bank*, 57 Ind. 198.

4. A subscriber who became a shareholder through fraud practised upon him by officers of the bank or by officers of the Government, must look to them for redress, and is estopped, as against creditors, to deny that he is a shareholder within this section, if, when the rights of creditors accrued, he had the rights appertaining to that position. *Scott v. Deweese*, 181 U. S. 202, 213; see

Lantry v. Wallace, 182 Id. 536. Such a fraud is not proved by showing, after the bank has suspended and has been placed into the hands of a receiver, that the whole amount of the proposed increase was not in fact "paid in," as required by § 5142, although the contrary was certified by the Comptroller upon the bank's report to that officer. *Scott v. Deweese*, 181 U. S. 202, 209, 211.

In proceedings under this section the alleged stockholder may show, even after the bank has entered him as such and issued him a certificate for stock, that his subscription was for a proposed increase of its capital stock, that the certificate issued was in fact for old stock transferred to him without his knowledge or consent, and that thus, as no contract was made, he is not a stockholder. *Stephens v. Follet*, 43 Fed. 842, 845. See generally, *Wilson v. Loan Co.*, 98 Fed. 688; *Stuart v. Hayden*, 169 U. S. 2; *Robinson v. Southern Nat. Bank*, 180 U. S. 295, 309; *Studebaker v. Perry*, 184 Id. 258; 102 Fed. 947; *Earle v. Carson*, 46 C. C. A. 503, and note; *Schofield v. Twining*, 127 Fed. 486.

The shareholder cannot controvert the bank's legal existence when called on to respond to this liability. *Keyser v. Hitz*, 2 Mackey (D. C.), 473; *Casey v. Galli*, 94 U. S. 673. Nor can he, when also a creditor of the bank, diminish his assessment by offsetting his individual claim. *Hobart v. Gould*, 8 Fed. 57. His statutory liability survives to his personal representatives, and includes interest on the bank's debts not exceeding such liability. *Richmond v. Irons*, 121 U. S. 27; *Bowden v. Johnson*, 107 U. S. 251.

When the Comptroller orders an assessment for the par value of the stock, an action for the recovery thereof must be at law. *Casey v. Galli*, 94 U. S. 673; *Kennedy v. Gibson*, 8 Wall. 498, 505; *Stanton v. Wilkeson*, 8 Ben. 357; *Bailey v. Sawyer*, 4 Dillon, 463; *Witters v. Sowles*, 32 Fed. 767. The receiver cannot maintain such action if a bill has already been filed by a creditor under the Act

of 1876. *Harvey v. Lord*, 11 Biss. 144; 10 Fed. 236. In such action there must be proof that the bank was insolvent. The Comptroller's letter is insufficient. *Bowden v. Morris*, 1 Hughes, 378.

A receiver is an officer of the United States, and as such may sue or be sued in the Federal courts in the district in which such bank is located. *Frelinghuysen v. Baldwin*, 12 Fed. 395; *Weeks v. International Trust Co.*, 125 Id. 370. He is the proper person to bring suit, and he may do so either in his own name or in the name of the bank for his use. *Stanton v. Wilkeson*, 8 Ben. 357. A letter from the Comptroller directing him to bring suit is sufficient evidence that such suit was authorized. *Bowden v. Johnson*, 107 U. S. 251.

The stockholder's liability attaches when the contracts are made, debts are created, or engagements are entered into by the bank, but not for such as are made after his decease. *Witters v. Sowles*, 32 Fed. 130.

In general, statutes creating personal liability of stockholders in banks, being in derogation of the common law, are construed strictly; and these statutes will not be so construed as to fix the liability upon stockholders for debts or contracts made prior to an amendment of the statute or charter; *Smathers v. Western Carolina Bank* (N. C.), 47 S. E. Rep. 893.

The determination of the Comptroller as to the necessity for instituting proceedings to enforce the personal liability of shareholders, and to what extent, is conclusive upon them. Such determination is indispensable to the institution of a suit by the receiver, and the fact must be distinctly proved and averred if denied. *Kennedy v. Gibson*, 8 Wall. 498; *Bailey v. Sawyer*, 4 Dillon, 463; *National Bank v. Case*, 99 U. S. 628. The ordinary costs of the cause are taxable against the stockholders; but they cannot be compelled to contribute, as a debt due to the bank from themselves, to a fund for the payment of the expenses of the receivership. *Richmond v. Irons*, 121 U. S. 27, 64.

The expression "all contracts, debts, and engagements" must be restricted to such as have been duly contracted in the ordinary course of the business of the bank. Such business ceases when the bank goes into liquidation; after that there is no authority on the part of the officers of the bank to transact any business in its name so as to bind the shareholders, except that which is implied in the duty of liquidation, unless the stockholders expressly confer authority to that effect. *Richmond v. Irons*, 121 U. S. 27, 60.

An assessment imposed upon the shareholders by their own action under Rev. Stats. § 5205 is not the assessment contemplated by this section. The obligations resulting from the two sections are entirely diverse, and payments made under the former cannot be applied to the satisfaction of the individual responsibility secured by the latter. *Delano v. Butler*, 118 U. S. 634. A subscription by a stockholder to a proposed increase of the capital stock to the sum of \$500,000, and his payment thereof, is a binding agreement to accept the number of shares he paid for, although such stock is not increased to the full amount proposed. *Id.* Such a stockholder is not entitled to equitable relief on the ground that the money paid under Rev. Stats. § 5205, was in fact applied to the satisfaction of the debts of the bank, and that he paid it in the belief that it would exonerate him from further liability as a stockholder, such belief being induced by representations made to him by others interested in the affairs of the bank. *Id.*

A State statute of limitations may be pleaded as effectively in a Federal as in a State court, and the former will follow the decisions of the latter in construing it. *Leffingwell v. Warren*, 2 Black (U. S.), 599, 603; *Brady v. Daly*, 175 U. S. 148, 158; *Balkam v. Woodstock Iron Co.* 154 Id. 177, 189; *Scull v. Raymond*, 18 Fed. 547; *Tridell v. Munhall*, 124 Id. 802; *Price v. Yates*, 2 Nat. Bank Cases, 204; 19 Albany Law Journal, 295.

A bank receiver cannot recover back from a stockholder a dividend paid him, entirely out of the capital, prior to the appointment of the receiver, when such stockholder acted in good faith, believing the same to be paid out of the profits made by the bank, which was then solvent. *McDonald v. Williams*, 174 U. S. 397.

In an action brought by the receiver of a national bank he is not required to give bond, by virtue of § 1001. *Pepper v. Fidelity, &c. Co.*, 125 Fed. 822.

The Act of 1876, chap. 156 (19 St. 63), stated under § 5220, *infra*, did not create any new liability, nor did it provide for enforcing such liability against stockholders where it could not have been enforced before that act was passed. That statute is not retroactive and does not create rights which did not exist prior to its passage. If any construction is to be given to it, it is that of limiting the tribunal in which proceedings are to be instituted for enforcing the stockholders' liability to a United States court, instead of allowing creditors to resort to any competent tribunal with equity power. *Irons v. Manufacturers' Nat. Bank*, 17 Fed. 808. See *Richmond v. Irons*, 121 U. S. 27, 48. A bill filed under § 2 of the Act of 1876 is good although it does not purport on its face to be filed by the complainant on his own behalf and on behalf of all other creditors. A prayer therein that the complainant be given priority over other creditors will be disregarded. *Id.* A bill filed before the enactment of the law of 1876, and amended thereafter so as to make the individual shareholders defendants, will not be held multifarious for that reason. *Id.*; *Harvey v. Lord*, 11 Biss. 144; 10 Fed. 236. Stockholders named in a bill to enforce their liability and averred by it to be without the jurisdiction of the court, need not be made co-defendants. Creditors of the bank are not proper parties to such a bill. *Kennedy v. Gibson*, 8 Wall. 498.

In cases of voluntary liquidation, the receiver collects from the stockholders by a creditor's bill, under the Act of

June 30, 1876. *Williamson v. American Bank*, 115 Fed. 793, 52 C. C. A. 1, 6, *note*; *McClaine v. Rankin*, 119 Fed. 110; *King v. Pomeroy*, 121 Id. 287.

SECT. 5152. [*Exception for Trustees, etc.*].—"Persons holding stock as executors, administrators, guardians, or trustees shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust funds would be if living and competent to act and hold the stock in his own name."

See the note to § 5151; *Davis v. Stevens*, 17 Blatch. 259; 20 Albany Law Journal, 490; *Price v. Whitney*, 28 Fed. 297; *Horton v. Mercer*, 71 Fed. 153. Upon the death of a stockholder, his estate is put in his place as to the liability to assessment, and the statutory liability exists against the estate and not against the executor individually. *Wickham v. Hull*, 60 Fed. 326. But this section only relieves the classes of persons therein named from execution against their individual assets, and does not qualify the general rule of liability under § 5151. *Parker v. Robinson*, 71 Fed. 256, 257; *Hampton v. Foster*, 127 Id. 468.

The meaning of this section seems to be that such estates and funds as an executor or administrator has in his hands, at the time when the liability attaches, are liable in like manner as the testator would be if living at that time, and having in his hands the stock and other property, as the executor had it in his hands; and not that they are holden as the testator would have been if the liability had attached in his lifetime (*Witters v. Sowles*, 32 Fed. 130); and to protect persons who hold stock in a representative capacity from any personal liability. *Irons v.*

Manufacturers' Bank, 21 Fed. 197; *Whitney v. Butler*, 118 U. S. 655.

The estate in the hands of an executrix, at the date of the failure of a national bank, is liable for the assessment on stock belonging to the estate, as if the deceased was living; and the fact that the time for filing claims against the estate has expired, does not bar an action to fix such liability. *Zimmerman v. Carpenter*, 84 Fed. 747.

A stockholder in a national bank died and his estate was settled and distributed. Between the time of his death and the distribution the bank failed, and after the distribution an assessment was made on those who were stockholders at the time of the failure, for the payment of the bank debts. In an action brought by the receiver against the administrator it was held that the latter was not a shareholder at the time of the failure, but that the estate was liable. *Davis v. Weed*, 44 Conn. 569.

An assignee for creditors, though previously appointed, is likewise bound to pay the assessment. *Graham v. Platt*, 28 Col. 421. Only the estate of a ward in the hands of his guardian is liable for such assessment. *Clark v. Ogilvie* (Ky.), 63 S. W. 429.

Upon a suit in equity against a husband and wife jointly to reach assets in the hands of the husband as executor of a deceased shareholder, and also on failure thereof to reach the interest of the wife as residuary legatee of such deceased shareholder, the wife is the real party in interest and the husband is therefore not a competent witness. *Witters v. Sowles*, 28 Fed. 121.

The books of the bank are, among the shareholders, public records, and a copy of entries in such a book, if identified as a true one, is admissible to prove such entries. *Brown v. Ellis*, 103 Fed. 834, 836. See, generally, *Stuart v. Hayden*, 169 U. S. 1, 8; *Matteson v. Dent*, 176 Id. 524, 525; 70 Minn. 510.

SECT. 5153. [As amended by the Act of March 3, 1901, ch. 871 (31 St. 1448).]

"SEC. 5153. All national banking associations, designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary, but receipts derived from duties on imports in Alaska, the Hawaiian Islands, and other islands under the jurisdiction of the United States may be deposited in such depositaries subject to such regulations; and such depositaries may also be employed as financial agents of the Government; and they shall perform all such reasonable duties as depositaries of public moneys and financial agents of the Government as may be required of them. The Secretary of the Treasury shall require the associations thus designated to give satisfactory security, by the deposit of United States bonds and otherwise, for the safe-keeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government. And every association so designated as receiver or depositary of the public money shall take and receive at par all of the national currency bills, by whatever association issued, which have been paid into the Government for internal revenue or for loans or stocks."

Such designation of a national bank as a national depositary does not change the character of its organization, or make its managers public officers, or the Government liable for its acts. *Branch v. United States*, 12 Ct. Cl. 281.

The Secretary of the Treasury has authority under this section to receive from national banks, designated as depositaries of public money, Treasury notes of the United States as security for the safe-keeping and prompt payment of the public money deposited with them, and for

the faithful performance of their duties as financial agents of the Government. 16 A. G. Op. 96.

SECT. 5154. [Conversion of State Banks]. — “Any bank incorporated by special law, or any banking institution organized under a general law of any State, may become a national association under this Title by the name prescribed in its organization certificate; and in such case the articles of association and the organization certificate may be executed by a majority of the directors of the bank or banking institution; and the certificate shall declare that the owners of two-thirds of the capital stock have authorized the directors to make such certificate, and to change and convert the bank or banking institution into a national association. A majority of the directors, after executing the articles of association and organization certificate, shall have power to execute all other papers, and to do whatever may be required to make its organization perfect and complete as a national association. The shares of any such bank may continue to be for the same amount each as they were before the conversion, and the directors may continue to be the directors of the association until others are elected or appointed in accordance with the provisions of this chapter; and any State bank which is a stockholder in any other bank, by authority of State laws, may continue to hold its stock, although either bank, or both, may be organized under and have accepted the provisions of this Title. When the Comptroller of the Currency has given to such association a certificate, under his hand and official seal, that the provisions of this Title have been complied with, and that it is authorized to commence the business of banking, the association shall have the same powers and privileges, and shall be subject to the same duties, respon-

sibilities, and rules, in all respects, as are prescribed for other associations, originally organized as national banking associations, and shall be held and regarded as such an association. But no such association shall have a less capital than the amount prescribed for associations organized under this Title."

See the note to § 5133; *Metropolitan Bank v. Claggett*, 141 U. S. 520; *Michigan Ins. Bank v. Eldred*, 143 Id. 293, 300.

No authority other than that conferred by Congress is required to enable a State bank to become a national bank; and the Comptroller's certificate is conclusive as to the completeness of the organization, in a suit to enforce a stockholder's liability or contracts with the bank. *Casey v. Galli*, 94 U. S. 673; *Lockwood v. National Bank*, 9 R. L. 308; *Maynard v. Mechanics' Bank*, 1 Brewst. (Penn.) 483; *City Nat. Bank v. Phelps*, 97 N. Y. 44; *Thatcher v. West River Bank*, 19 Mich. 196. The liabilities of the corporation remain the same notwithstanding the change from a State to a national bank. *Coffey v. Bank of Missouri*, 46 Mo. 140; *Austin v. Tecumseh Nat. Bank*, 49 Neb. 276, 59 Am. State Rep. 553 and note. A savings bank in the District of Columbia, under this section and the Act of June 30, 1876 (19 St. 94), may be converted into a national bank. *Keyser v. Hitz*, 2 Mackey, 473. If the owners of more than two-thirds of the stock of a bank consent to the conversion of the bank into a national bank, it can be effected without the concurrence of the other stockholders. *Id.* While making the change from a State to a national bank, and before the requirements of the State statute are fully complied with, it is subject to State taxation. *Commonwealth v. Manufacturers', &c. Bank*, 2 Pearson's Dec. (Penn.) 386; 2 Browne's N. B. Cas. 459.

In *Atlantic Bank v. Harris*, 118 Mass. 147, an action by a national bank, as such, was sustained on a cause of action accruing to the association as a State bank, although by a

State statute the State bank was continued a body corporate for three years for the purpose of prosecuting and defending suits, &c. See further, as to the authority of a national bank to sue in its old name as a State corporation, *Thomas v. Farmers' Bank*, 46 Md. 43.

A certificate is not invalid, issued from the Comptroller's office and bearing its seal, because it is signed by one as "Acting" Comptroller of the Currency. *Keyser v. Hitz*, 133 U. S. 138, 145.

The provisions of this section and of § 5155 refer exclusively to banks organized under the special or general laws of a State, and do not apply to banks existing in Hawaii before the Act of April 30, 1900, which extended our banking laws to that Territory; they were also extended to Porto Rico by the Act of April 12, 1900. 22 A. G. Op. 169, 177.

By § 3410 it was provided that "the capital of any State bank or banking association which has ceased or shall cease to exist, or which has been or shall be converted into a national bank, shall be assumed to be the capital as it existed immediately before such bank ceased to exist or was converted as aforesaid."

The Act of Feb. 14, 1880, ch. 25 (21 St. 66), provides—

"That any national gold bank organized under the provisions of the laws of the United States, may, in the manner and subject to the provisions prescribed by Rev. Stats. § 5154, for the conversion of banks incorporated under the laws of any State, cease to be a gold bank, and become such an association as is authorized by § 5133, for carrying on the business of banking, and shall have the same powers and privileges, and shall be subject to the same duties, responsibilities, and rules, in all respects, as are by law prescribed for such associations: *Provided*, That

all certificates of organization which shall be issued under this act shall bear the date of the original organization of each bank respectively as a gold bank."

SECT. 5155. [**Converted Banks may Retain Branches**].— "It shall be lawful for any bank or banking association, organized under State laws and having branches, the capital being joint and assigned to and used by the mother bank and branches in definite proportions, to become a national banking association in conformity with existing laws and to retain and keep in operation its branches, or such one or more of them as it may elect to retain, the amount of the circulation redeemable at the mother bank and each branch to be regulated by the amount of capital assigned to and used by each."

See the note to § 5154.

SECT. 5156. [**Status of National Banks Organized under the Act of February 25, 1863**].—"That nothing in this Title shall affect any appointments made, acts done, or proceedings had or commenced prior to the third day of June, eighteen hundred and sixty-four, in or toward the organization of any national banking association under the act of February twenty-five, eighteen hundred and sixty-three; but all associations which on the third day of June, eighteen hundred and sixty-four, were organized or commenced to be organized under that act shall enjoy all the rights and privileges granted, and be subject to all the duties, liabilities, and restrictions imposed by this Title, notwithstanding all the steps prescribed by this Title for the organization of associations were not pursued, if such associations were duly organized under that act."

See *Bullard v. Bank*, 18 Wall. 589; *Conklin v. Second Nat. Bank*, 45 N. Y. 655.

CHAPTER II

OBTAINING AND ISSUING CIRCULATING NOTES.

SECT. 5157. [**Laws Governing Certain Associations**]. — “The provisions of chapters two, three, and four [three, five, and seven of this edition] of this Title, which are expressed without restrictive words, as applying to ‘national banking association,’ or to ‘associations,’ apply to all associations organized to carry on the business of banking under any act of Congress.”

SECT. 5158. [**United States Bonds Defined**]. — “The term ‘United States bonds,’ as used throughout this chapter, shall be construed to mean registered bonds of the United States.”

SECT. 5159. “Every association, after having complied with the provisions of this Title, preliminary to the commencement of the banking business, and before it shall be authorized to commence banking business under this Title, shall transfer and deliver to the Treasurer of the United States any United States registered bonds, bearing interest, to an amount not less than \$30,000 and not less than one-third of the capital stock paid in. Such bonds shall be received by the Treasurer upon deposit and shall be by him safely kept in his office until they shall be otherwise disposed of in pursuance of the provisions of this Title.”

This section was amended by §§ 8 and 10 of the Act of July 12, 1882, stated under § 5133, *supra*.

See § 4 of the Act of 1874, printed in note to § 5191. *Van Antwerp v. Hulburt*, 8 Blatch. 282.

The Treasurer of the United States cannot retain as security for a claim due to the United States the bonds deposited with him by a national bank under this section to secure its circulation. 12 A. G. Op. 549.

When bonds held by the United States Treasurer as security for the circulating notes of a national bank are called, their proceeds are to be applied to retiring the circulation secured thereby, if the bank does not substitute interest-bearing bonds therefor. 18 A. G. Op. 492. A national bank whose charter is about to expire, and which takes no steps towards liquidation under §§ 5220-5224, cannot withdraw all the bonds deposited to secure its circulation, upon depositing lawful money equal to the amount of its outstanding circulation. 17 A. G. Op. 409.

SECT. 5160. [Relation of Bond Deposit to Capital].—“The deposit of bonds made by each association shall be increased as its capital may be paid up or increased, so that every association shall at all times have on deposit with the Treasurer registered United States bonds to the amount required by law. And any association that may desire to reduce its capital or close up its business and dissolve its organization may take up its bonds upon returning to the Comptroller its circulating notes in the proportion hereinafter required, or may take up any excess of bonds beyond the amount required by law, and upon which no circulating notes have been delivered.”

See the note to § 5159.

SECT. 5161. [Exchange of Bonds].—“To facilitate a compliance with the two preceding sections, the Secretary of the Treasury is authorized to receive from any associa-

tion, and cancel, any United States coupon bonds, and to issue in lieu thereof registered bonds of like amount, bearing a like rate of interest, and having the same time to run."

SECT. 5162. [**Bonds Held by Treasurer**]. — "All transfers of United States bonds made by any association under the provisions of this Title shall be made to the Treasurer of the United States in trust for the association, with a memorandum written or printed on each bond, and signed by the cashier, or some other officer of the association making the deposit. A receipt shall be given to the association, by the Comptroller of the Currency, or by a clerk appointed by him for that purpose, stating that the bond is held in trust for the association on whose behalf the transfer is made, and as security for the redemption and payment of any circulating notes that have been or may be delivered to such association. No assignment or transfer of any such bond by the Treasurer shall be deemed valid unless countersigned by the Comptroller of the Currency."

Bonds deposited as security for the bank's circulating notes are held in trust for their payment, and the trustee's personal claims against the creator of the trust cannot be set off against them. *Cook County Nat. Bank v. United States*, 107 U. S. 445, 452.

SECT. 5163. [**Record of Bond Transfers**]. — "The Comptroller of the Currency shall keep in his office a book in which he shall cause to be entered, immediately upon countersigning it, every transfer or assignment by the Treasurer, of any bonds belonging to a national banking association, presented for his signature. He shall state in

such entry the name of the association from whose account the transfer is made, the name of the party to whom it is made, and the par value of the bonds transferred."

SECT. 5164. [*Notice of Transfer*]. — "The Comptroller of the Currency shall, immediately upon countersigning and entering any transfer or assignment by the Treasurer of any bonds belonging to a national banking association, advise by mail the association from whose accounts the transfer is made of the kind and numerical designation of the bonds and the amount thereof so transferred."

SECT. 5165. [*Examination of Bonds and Records*]. — "The Comptroller of the Currency shall have at all times, during office hours, access to the books of the Treasurer of the United States for the purpose of ascertaining the correctness of any transfer or assignment of the bonds deposited by an association, presented to the Comptroller to countersign; and the Treasurer shall have the like access to the book mentioned in section fifty-one hundred and sixty-three, during office hours, to ascertain the correctness of the entries in the same; and the Comptroller shall also at all times have access to the bonds on deposit with the Treasurer to ascertain their amount and condition."

SECT. 5166. [*Annual Examination of Bonds*]. — "Every association having bonds deposited in the office of the Treasurer of the United States shall, once or oftener in each fiscal year, examine and compare the bonds pledged by the association with the books of the Comptroller of the Currency and with the accounts of the association, and, if they are found correct, to execute to the Treasurer a certificate setting forth the different kinds and the amounts thereof, and that the same are in the possession and custody of the Treasurer at the date of the certificate.

Such examination shall be made at such time or times during the ordinary business hours as the Treasurer and the Comptroller, respectively, may select, and may be made by an officer or agent of such association, duly appointed in writing for that purpose; and his certificate before mentioned shall be of like force and validity as if executed by the president or cashier. A duplicate of such certificate, signed by the Treasurer, shall be retained by the association."

SECT. 5167. [General Provisions Respecting Bonds].—
"The bonds transferred to and deposited with the Treasurer of the United States by any association for the security of its circulating notes shall be held exclusively for that purpose until such notes are redeemed, except as provided in this Title. The Comptroller of the Currency shall give to any such association powers of attorney to receive and appropriate to its own use the interest on the bonds which it has so transferred to the Treasurer; but such powers shall become inoperative whenever such association fails to redeem its circulating notes. Whenever the market or cash value of any bonds thus deposited with the Treasurer is reduced below the amount of the circulation issued for the same, the Comptroller may demand and receive the amount of such depreciation in other United States bonds at cash value, or in money, from the association, to be deposited with the Treasurer as long as such depreciation continues. And the Comptroller, upon the terms prescribed by the Secretary of the Treasury, may permit an exchange to be made of any of the bonds deposited with the Treasurer by any association for other bonds of the United States authorized to be received as security for circulating notes if he is of opinion that such an exchange

can be made without prejudice to the United States; and he may direct the return of any bonds to the association which transferred the same, in sums of not less than one thousand dollars, upon the surrender to him and the cancellation of a proportionate amount of such circulating notes: *Provided*, That the remaining bonds which shall have been transferred by the association offering to surrender circulating notes are equal to the amount required for the circulating notes not surrendered by such association, and that the amount of bonds in the hands of the Treasurer is not diminished below the amount required to be kept on deposit with him, and that there has been no failure by the association to redeem its circulating notes, nor any other violation by it of the provisions of this Title, and that the market or cash value of the remaining bonds is not below the amount required for the circulation issued for the same."

See the note to § 5162; see also § 11 of the Act of March 14, 1900, stated under § 5133, *supra*; *Van Antwerp v. Hulburd*, 8 Blatch. 282.

SECT. 5168. [Examination of Organization Proceedings].
—"Whenever a certificate is transmitted to the Comptroller of the Currency, as provided in this Title, and the association transmitting the same notifies the Comptroller that at least fifty per centum of its capital stock has been duly paid in, and that such association has complied with all the provisions of this Title required to be complied with before an association shall be authorized to commence the business of banking, the Comptroller shall examine into the condition of such association, ascertain especially the amount of money paid in on account of its

capital, the name and place of residence of each of its directors, and the amount of the capital stock of which each is the owner in good faith, and generally whether such association has complied with all the provisions of this Title required to entitle it to engage in the business of banking; and shall cause to be made and attested by the oaths of a majority of the directors, and by the president or cashier of the association, a statement of all the facts necessary to enable the Comptroller to determine whether the association is lawfully entitled to commence the business of banking."

SECT. 5169. [**Comptroller's Certificate of Authority**]. — "If, upon a careful examination of the facts so reported, and of any other facts which may come to the knowledge of the Comptroller, whether by means of a special commission appointed by him for the purpose of inquiring into the condition of such association, or otherwise, it appears that such association is lawfully entitled to commence the business of banking, the Comptroller shall give to such association a certificate, under his hand and official seal, that such association has complied with all the provisions required to be complied with before commencing the business of banking, and that such association is authorized to commence such business. But the Comptroller may withhold from an association his certificate authorizing the commencement of business whenever he has reason to suppose that the shareholders have formed the same for any other than the legitimate objects contemplated by this Title."

See *Casey v. Galli*, 94 U. S. 673. Where the existence of the corporation is denied, the certificate of the Comptroller of the Currency under this section is competent evidence in proof of the disputed fact. *Mix v. Bank of*

Bloomington, 91 Ill. 20. The Comptroller's certificate is conclusive evidence of the incorporation. *Citizens' Nat. Bank v. Great Western El. Co.*, 13 So. Dak. 1.

SECT. 5170. [Publication of Certificate of Authority].—
 "The association shall cause the certificate issued under the preceding section to be published in some newspaper printed in the city or county where the association is located, for at least sixty days next after the issuing thereof; or, if no newspaper is published in such city or county, then in the newspaper published nearest thereto.

SECT. 5171. [Repealed].— See § 10 of the Act of 1882, and § 12 of the Act of 1900, stated under § 5133, *supra*. The Act of March 3, 1875, ch. 130, § 1 (18 St. 372), provided —

"That the national bank notes shall be printed under the direction of the Secretary of the Treasury, and upon the distinctive or special paper which has been, or may hereafter be, adopted by him for printing United States notes. . . . *Provided*, That the above-named notes, currency, and other securities of the United States be executed with not less than three plate-printings: *And provided further*, That the Secretary of the Treasury shall have executed one or two of such printings by such responsible and capable and experienced bank-note companies or bank-note engravers as may contract for the same at the lowest cost to the Government, and at prices not greater than those heretofore paid for the same class of work; no company or establishment executing more than one printing upon the same note or obligation, and the final printing and finishing to be executed in the Treasury Department."

The Act of Aug. 13, 1894, ch. 281 (28 St. 278), provided —

“That circulating notes of national banking associations and United States legal tender notes and other notes and certificates of the United States payable on demand and circulating or intended to circulate as currency and gold, silver or other coin shall be subject to taxation as money on hand or on deposit under the laws of any State or Territory: *Provided*, That any such taxation shall be exercised in the same manner and at the same rate that any such State or Territory shall tax money or currency circulating as money within its jurisdiction.

“SEC. 2. That the provisions of this Act shall not be deemed or held to change existing laws in respect to the taxation of national banking associations.”

SECT. 5172. [**Preparation of Bank Circulation**]. — “In order to furnish suitable notes for circulation, the Comptroller of the Currency shall, under the direction of the Secretary of the Treasury, cause plates and dies to be engraved, in the best manner to guard against counterfeiting and fraudulent alterations, and shall have printed therefrom, and numbered, such quantity of circulating notes, in blank, of the denominations of one dollar, two dollars, three dollars, five dollars, ten dollars, twenty dollars, fifty dollars, one hundred dollars, five hundred dollars, and one thousand dollars, as may be required to supply the associations entitled to receive the same. Such notes shall express upon their face that they are secured by United States bonds, deposited with the Treasurer of the United States, by the written or engraved signatures of the Treasurer and Register, and by the imprint of the seal of the Treasury; and shall also express upon their face the promise of the association receiv-

ing the same to pay on demand, attested by the signatures of the president or vice-president and cashier; and shall bear such devices and such other statements, and shall be such form, as the Secretary of the Treasury shall, by regulation, direct."

By § 12 of the Act of 1900, stated under § 5133, notes cannot be issued under the value of five dollars each. See § 5 of the Act of 1874, cited, § 5191, *note*; *Ex parte* Houghton, 8 Fed. 897; *Re* Aldrich, 16 Id. 369, 371. The imprint of the seal of the Treasury forms no part of the contract. *United States v. Bennett*, 17 Blatch. 357.

SECT. 5173. [Control of Plates and Dies]. — "The plates and special dies to be procured by the Comptroller of the Currency for the printing of such circulating notes shall remain under his control and direction and the expenses necessarily incurred in executing the laws respecting the procuring of such notes and all other expenses of the Bureau of the Currency [except as provided by sec. 3, Act June 20, 1874, and secs. 6 and 8, Act July 12, 1882] shall be paid out of the proceeds of the taxes or duties assessed and collected on the circulation of national banking associations under this Title."

SEC. 5174. [As amended by 19 St. 252.] [Examination of Plates and Dies]. — "The Comptroller of the Currency shall cause to be examined, each year, the plates, dies, bed pieces, and other material from which the national bank circulation is printed, in whole or in part, and file in his office annually a correct list of the same. Such material as shall have been used in the printing of the notes of associations which are in liquidation, or have closed business, shall be destroyed, under such regulations as shall be

prescribed by the Comptroller of the Currency and approved by the Secretary of the Treasury. The expenses of any such examination or destruction shall be paid out of any appropriation made by Congress for the special examination of national banks and bank-note plates.

The Act of Feb. 27, 1877, ch. 69 (19 St. 252), changed in the second line "but pieces" to "bed pieces."

SECT. 5175.— "Not more than one-sixth part of the notes furnished to any association shall be of a less denomination than five dollars. After specie payments are resumed, no association shall be furnished with notes of a less denomination than five dollars."

See § 12 of the Act of 1900, stated under § 5133, *supra*.

SECT. 5176. Repealed by § 10 of the Act of 1882, stated under § 5133, *supra*.

SECTS. 5177-5181. Repealed by the Act of Jan. 14, 1875, ch. 15, § 3, which provided that—

"each existing banking association may increase its circulating notes in accordance with existing law without respect to said aggregate limit; and new banking associations may be organized in accordance with existing law without respect to said aggregate limit; and the provisions of law for the withdrawal and redistribution of national bank currency among the several States and Territories are hereby repealed."

The last clause just quoted repeals §§ 7, 8, 9 of 18 St. 123, ch. 343. The original acts cited on § 5177 contemplated an apportionment altogether future, and the first part of § 7 of 13 St. 484, ch. 78, was omitted in the Revision as no longer operative. 2 Commissioners' Draft

of U. S. Rev. Stats. 2473. See § 10 of St. 1882, cited, § 5133, *note*. See *Talbott v. Silver Bow County*, 139 U. S. 438, 442.

In § 5180, "forthwith" is here added in the fourth line, and the words "necessary to be withdrawn from," in that line, are substituted for "to be retired by" in the original act. 2 Commissioners' Draft of United States Rev. Stats. 2475.

SECT. 5182. [Circulation, for What Receivable]. — "After any association receiving circulating notes under this Title has caused its promise to pay such notes on demand to be signed by the president or vice-president and cashier thereof, in such manner as to make them obligatory promissory notes, payable on demand at its place of business, such association may issue and circulate the same as money. And the same shall be received at par in all parts of the United States in payment of taxes, excises, public lands, and all other dues to the United States, except duties on imports; and also for all salaries and other debts and demands owing by the United States to individuals, corporations, and associations within the United States, except interest on the public debt, and in redemption of the national currency."

Bank notes lawfully issued and actually current at par, though not legal tender, are treated as "money." *Woodruff v. Mississippi*, 162 U. S. 291, 800. The Act of July 28, 1892, ch. 317 (27 St. 322), entitled "An Act to amend the national bank Act in providing for the redemption of national bank notes stolen from or lost by banks of issue," provided —

"That the provisions of the Revised Statutes of the United States, providing for the redemption of national

bank notes, shall apply to all national bank notes that have been or may be issued to, or received by, any national bank, notwithstanding such notes may have been lost by or stolen from the bank and put in circulation without the signature or upon the forged signature of the president or vice-president and cashier."

Legal Tender and Lawful Money.—"The following statement concerning the legal-tender properties of money of the United States is based upon United States Revised Statutes, §§ 3585, 3586, 3587, 3588, 3589, and 3590, and the acts amendatory thereof and additional thereto:

"Gold coin, standard silver dollars, subsidiary silver, minor coins, United States notes, and Treasury notes of 1890 have the legal-tender quality as follows: Gold coin is legal tender for its nominal value when not below the limit of tolerance in weight; when below that limit it is legal tender in proportion to its weight; standard silver dollars and Treasury notes of 1890 are legal tender for all debts, public and private, except where otherwise expressly stipulated in the contract; subsidiary silver is legal tender to the extent of \$10, minor coins to the extent of 25 cents, and United States notes for all debts, public and private, except duties on imports and interest on the public debt. Gold certificates, silver certificates, and national bank notes are non-legal tender money. Both kinds of certificates, however, are receivable for all public dues, and national bank notes are receivable for all public dues except duties on imports, and may be paid out for all public dues, except interest on the public debt.

"The term 'lawful money' is understood to apply to every form of money which is endowed by law with the legal-tender quality." (See 17 A. G. Op. 123.)

SECT. 5183. [*Issue of Other Notes Prohibited*].—“No national banking association shall issue post notes or any other notes to circulate as money than such as are authorized by the provisions of this Title.”

This section was amended by 18 St. 320, ch. 80, by inserting the words “post notes or” after “issue.” This provision does not apply to the certifying, as “good,” of checks given in the course of business for convenience (*Merchants' Bank v. State Bank*, 10 Wall. 604; *Espy v. Cincinnati Bank*, 18 Id. 604); or to certificates of deposit, not payable until a future day certain. *Hunt, Appellant*, 141 Mass. 515; *Riddle v. Butler Bank*, 27 Fed. 503.

Fraudulent Notes to be Marked.—Sec. 5 of the Act of June 30, 1876, provides “that all United States officers charged with the receipt or disbursement of public moneys, and all officers of national banks, shall stamp or write in plain letters the word ‘counterfeit,’ ‘altered,’ or ‘worthless,’ upon all fraudulent notes issued in the form of and intended to circulate as money which shall be presented at their places of business; and if such officer shall wrongfully stamp any genuine note of the United States, or of the national banks, they shall, upon presentation, redeem such notes at the face value thereof.”

SECT. 5184. [As amended by the Act of June 23, 1874, c. 455, § 1.] [*Worn-out or Mutilated Circulation*].—“It shall be the duty of the Comptroller of the Currency to receive worn-out or mutilated circulating notes issued by any banking association, and also, on due proof of the destruction of any such circulating notes, to deliver in place thereof to the association other blank circulating notes to an equal amount. Such worn-out or mutilated notes, after a memorandum has been entered in the proper

books, in accordance with such regulations as may be established by the Comptroller, as well as all circulating notes which shall have been paid or surrendered to be canceled, shall be macerated in presence of four persons, one to be appointed by the Secretary of the Treasury, one by the Comptroller of the Currency, one by the Treasurer of the United States, and one by the association, under such regulations as the Secretary of the Treasury may prescribe. A certificate of such *maceration*, signed by the parties so appointed, shall be made in the books of the Comptroller, and a duplicate thereof forwarded to the association whose notes are thus canceled."

See the note to § 5191, *infra*. This section as originally enacted required burning instead of maceration.

SECT. 5185. [Circulation of Gold Banks]. — "Associations may be organized in the manner prescribed by this Title for the purpose of issuing notes payable in gold; and upon the deposit of any United States bonds bearing interest payable in gold with the Treasurer of the United States, in the manner prescribed for other associations, it shall be lawful for the Comptroller of the Currency to issue to the association making the deposit circulating notes of different denominations, but none of them of less than five dollars, and not exceeding in amount eighty per centum of the par value of the bonds deposited, which shall express the promise of the association to pay them, upon presentation at the office at which they are issued, in gold coin of the United States, and shall be so redeemable."

See note, § 5154. This provision is substituted for §§ 3, 4, 5 of the cited act. 2 Commissioners' Draft of U. S. Rev. Stats. 2478. 18 St. 302, ch. 19, repeals so much of this section

as limits the circulation of banking associations organized for the purpose of issuing notes payable in gold, severally to \$1,000,000 and provides that —

“each of such existing banking associations may increase its circulating notes, and new banking associations may be organized, in accordance with existing law, with respect to such limitation.”

SECT. 5186. [*Reserve Requirements for Gold Banks*]. — “Every association organized for the purpose of issuing notes payable in gold shall at all times keep on hand not less than twenty-five per centum of its outstanding circulation, in gold or silver coin of the United States; and shall receive at par in the payment of debts the gold notes of every other such association which at the time of such payment is redeeming its circulating notes in gold coin of the United States, and shall be subject to all the provisions of this Title: *Provided*, That, in applying the same to associations organized for issuing gold notes, the terms ‘lawful money’ and ‘lawful money of the United States’ shall be construed to mean gold or silver coin of the United States; and the circulation of such association shall not be within the limitation of circulation mentioned in this Title.”

This and the preceding section are framed to embody the substance of §§ 3, 4, 5 of the cited act. 2 Commissioners’ Draft of U. S. Rev. Stats. 2479.

SECT. 5187. [*Penalty for Improper Countersigning or Delivering Circulation*]. — “No officer acting under the provisions of this Title shall countersign or deliver to any association, or to any other company or person, any circulating notes contemplated by this Title, except in accord-

ance with the true intent and meaning of its provisions. Every officer who violates this section shall be deemed guilty of a high misdemeanor, and shall be fined not more than double the amount so countersigned and delivered, and imprisoned not less than one year and not more than fifteen years."

SECT. 5188. [Penalty for Imitating Bank Circulation for Advertising Purposes]. — "It shall not be lawful to design, engrave, print, or in any manner make or execute, or to utter, issue, distribute, circulate, or use any business or professional card, notice, placard, circular, handbill, or advertisement in the likeness or similitude of any circulating note or other obligation or security of any banking association organized or acting under the laws of the United States which has been or may be issued under this Title, or any act of Congress, or to write, print, or otherwise impress upon any such note, obligation, or security any business or professional card, notice, or advertisement, or any notice or advertisement of any matter or thing whatever. Every person who violates this section shall be liable to a penalty of one hundred dollars, recoverable one-half to the use of the informer."

The only penalty here provided is a penalty recoverable in a *qui tam* action by an informer, and it cannot therefore be recovered by an indictment on the part of the Government. *United States v. Laescki*, 29 Fed. 699.

SECT. 5189. [Penalty for Mutilating Circulation]. — "Every person who mutilates, cuts, defaces, disfigures, or perforates with holes, or unites or cements together, or does any other thing to any bank bill, draft, note, or other evidence of debt, issued by any national banking associa-

tion, or who causes or procures the same to be done, with intent to render such bank bill, draft, note, or other evidence of debt unfit to be reissued by said association, shall be liable to a penalty of \$50, recoverable by the association."

For the general subject of the Federal crimes of forgery, embezzlement, etc., see the Title on "Crimes" in Gould and Tucker's Notes on the Revised Statutes, and cases there cited.

CHAPTER III.

REGULATION OF THE BANKING BUSINESS.

SECT. 5190. [Place of Business].—"The usual business of each national banking association shall be transacted at an office or banking house located in the place specified in its organization certificate."

See *Greves v. Shaw*, 173 Mass. 205, 208. This section does not prevent the purchase of coin by one bank at the banking house of another. *Merchants' Bank v. State Bank*, 10 Wall. 604.

A national bank cannot provide for the cashing of checks upon it at any other place than its office or banking-house. *Armstrong v. Second Nat. Bank*, 38 Fed. 883.

SECT. 5191. [Reserve Cities and Reserve Requirements].—"Every national banking association in either of the following cities: Albany, Baltimore, Boston, Cincinnati, Chicago, Cleveland, Detroit, Louisville, Milwaukee, New Orleans, New York, Philadelphia, Pittsburgh, Saint Louis, San Francisco, and Washington, shall at all times have on hand, in lawful money of the United States, an amount

equal to at least twenty-five per centum of the aggregate amount of its deposits in all respects; and every other association shall at all times have on hand, in lawful money of the United States, an amount equal to at least fifteen per centum of the aggregate amount of its deposits in all respects. Whenever the lawful money of any association in any of the cities named shall be below the amount of twenty-five per centum of its deposits, and whenever the lawful money of any other association shall be below fifteen per centum of its deposits, such association shall not increase its liabilities by making any new loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight, nor make any dividend of its profits until the required proportion between the aggregate amount of its deposits and its lawful money of the United States has been restored. And the Comptroller of the Currency may notify any association, whose lawful-money reserve shall be below the amount above required to be kept on hand, to make good such reserve; and if such association shall fail for thirty days thereafter so to make good its reserve of lawful money, the Comptroller may, with the concurrence of the Secretary of the Treasury, appoint a receiver to wind up the business of the association, as provided in section fifty-two hundred and thirty-four."

See *Van Antwerp v. Hulburd*, 8 Blatch. 282; *Stanton v. Wilkeson*, 8 Ben. 357; *Wright v. Merchants' Bank*, 1 Flippin, 568; *First Bank of Lyons v. Ocean Bank*, 60 N. Y. 278; *Briggs v. Spaulding*, 141 U. S. 132, 143.

The provisions of this section relate to the banks specified in § 6 of the Act of 1876, ch. 156. 15 A. G. Op. 605; see note, § 5220. The Act of March 3, 1887, ch. 378 (24 St. 559), provides —

“That whenever three-fourths in number of the national banks located in any city of the United States having a population of 50,000 people shall make application to the Comptroller of the Currency, in writing, asking that the name of the city in which such banks are located shall be added to the cities named in Revised Statutes, §§ 5191, 5192, the Comptroller shall have authority to grant such request, and every bank located in such city shall at all times thereafter have on hand, in lawful money of the United States, an amount equal to at least twenty-five per centum of its deposits, as provided in Revised Statutes, §§ 5191, 5195.

“SEC. 2. That whenever three-fourths in number of the national banks located in any city of the United States having a population of 200,000 people shall make application to the Comptroller of the Currency, in writing, asking that such city may be a central reserve city, like the city of New York, in which one-half of the lawful-money reserve of the national banks located in other reserve cities may be deposited, as provided in Revised Statutes, § 5195, the Comptroller shall have authority, with the approval of the Secretary of the Treasury, to grant such request, and every bank located in such city shall at all times thereafter have on hand, in lawful money of the United States, twenty-five per centum of its deposits, as provided in Revised Statutes, § 5191.”

The Act of March 3, 1903, ch. 1014 (32 St. 1223), provided —

“That § 1 of an Act entitled ‘An Act to amend §§ 5191, 5192 of the Revised Statutes of the United States, and for other purposes,’ approved March 3,

1887, be, and the same is hereby, amended to read as follows:

“That whenever three-fourths in number of the national banks located in any city of the United States having a population of twenty-five thousand people shall make application to the Comptroller of the Currency, in writing, asking that the name of the city in which such banks are located shall be added to the cities named in §§ 5191, 5192, of the Revised Statutes, the Comptroller shall have authority to grant such request, and every bank located in such city shall at all times thereafter have on hand, in lawful money of the United States, an amount equal to at least twenty-five per centum of its deposits, as provided in §§ 1591, 1595 of the Revised Statutes.’”

The Act of June 20, 1874, ch. 343 (18 St. 123), provided —

“SEC. 2. That § 31 of the ‘national bank act’ (*i. e.* of 1864) be so amended that the several associations therein provided for shall not hereafter be required to keep on hand any amount of money whatever, by reason of the amount of their respective circulations; but the moneys required by said section to be kept at all times on hand shall be determined by the amount of deposits in all respects, as provided for in the said section.

“SEC. 3. That every association organized, or to be organized, under the provisions of the said act, and of the several acts amendatory thereof, shall at all times keep and have on deposit in the Treasury of the United States, in lawful money of the United States, a sum equal to five per centum of its circulation, to be held and used for the

redemption of such circulation; which sum shall be counted as a part of its lawful reserve, as provided in § 2 of this act; and when the circulating notes of any such associations, assorted or unassorted, shall be presented for redemption, in sums of \$1,000, or any multiple thereof, to the Treasurer of the United States, the same shall be redeemed in United States notes. All notes so redeemed shall be charged by the Treasurer of the United States to the respective associations issuing the same, and he shall notify them severally, on the first day of each month, or oftener, at his discretion, of the amount of such redemptions; and whenever such redemptions for any association shall amount to the sum of \$500, such association so notified shall forthwith deposit with the Treasurer of the United States a sum in United States notes equal to the amount of its circulating notes so redeemed. And all notes of national banks worn, defaced, mutilated, or otherwise unfit for circulation shall, when received by any assistant treasurer or at any designated depository of the United States, be forwarded to the Treasurer of the United States for redemption as provided herein. And when such redemptions have been so re-imbursed, the circulating notes so redeemed shall be forwarded to the respective associations by which they were issued; but if any such notes are worn, mutilated, defaced, or rendered otherwise unfit for use, they shall be forwarded to the Comptroller of the Currency and destroyed and replaced as now provided by law: *Provided*, That each of said associations shall re-imburse to the Treasury the charges for transportation, and the costs for assorting such notes; and the associations hereafter organized shall also severally reimburse to the Treasury the cost of engraving such plates

as shall be ordered by each association respectively ; and the amount assessed upon each association shall be in proportion to the circulation redeemed, and be charged to the fund on deposit with the Treasurer: *And provided further*, That so much of § 32 of said national bank act requiring or permitting the redemption of its circulating notes elsewhere than at its own counter, except as provided for in this section, is hereby repealed.

" [St. March 3, 1875, ch. 130, § 3 (in part), provides that, at the end of each month, the Secretary of the Treasury shall re-imburse the Treasury to the full amount paid out under the provisions of this section by transfer of said amount from the deposit of the national banking associations with the Treasury of the United States ; and at the end of each fiscal year he shall transfer from said deposit to the Treasury of the United States such sum as may have been actually expended under his direction for stationery, rent, fuel, light, and other necessary incidental expenses which have been incurred in carrying into effect the provisions of this section. 18 St. 399.]

" SEC. 4. That any association organized under this act, or any of the acts of which this is an amendment, desiring to withdraw its circulating notes, in whole or in part, may, upon the deposit of lawful money with the Treasurer of the United States in sums of not less than \$9,000, take up the bonds which said association has on deposit with the Treasurer for the security of such circulating notes ; which bonds shall be assigned to the bank in the manner specified in § 19 of the national bank act ; and the outstanding notes of said association, to an amount equal to the legal-tender notes deposited, shall be redeemed at the Treasury of the United States, and destroyed as now pro-

vided by law: *Provided*, That the amount of the bonds on deposit for circulation shall not be reduced below \$50,000.

"SEC. 5. That the Comptroller of the Currency shall, under such rules and regulations as the Secretary of the Treasury may prescribe, cause the charter-numbers of the association to be printed upon all national bank notes which may be hereafter issued by him.

"SEC. 6. That the amount of United States notes outstanding, and to be used as a part of the circulating medium, shall not exceed the sum of \$382,000,000, which said sum shall appear in each monthly statement of the public debt, and no part thereof shall be held or used as a reserve."

SECT. 5192. [*Reserve Agents' Balances Counted as Reserve*]. — "Three-fifths of the reserve of fifteen per centum required by the preceding section to be kept may consist of balances due to an association from associations approved by the Comptroller of the Currency, organized under the Act of June three, eighteen hundred and sixty-four, or under this Title, and doing business in the cities of Albany, Baltimore, Boston, Charleston, Chicago, Cincinnati, Cleveland, Detroit, Louisville, Milwaukee, New Orleans, New York, Philadelphia, Pittsburg, Richmond, Saint Louis, San Francisco, and Washington.

"Clearing-house certificates, representing specie or lawful money specially deposited for the purpose, of any clearing-house association shall also be deemed to be lawful money in the possession of any association belonging to such clearing house, holding and owning such certificate, within the preceding section."

See preceding note, and note to § 5240, *infra*.

SECT. 5193. Repealed by the Act of March 14, 1900, ch. 41, § 6, stated under § 5133, *supra*. This section formerly provided —

“The Secretary of the Treasury may receive United States notes on deposit, without interest, from any national banking associations, in sums of not less than ten thousand dollars, and issue certificates therefor in such form as he may prescribe, in denominations of not less than five thousand dollars, and payable on demand in United States notes at the place where the deposits were made. The notes so deposited shall not be counted as part of the lawful-money reserve of the association ; but the certificates issued therefor may be counted as part of its lawful-money reserve, and may be accepted in the settlement of clearing-house balances at the places where the deposits therefor were made.”

14 St. 558, ch. 194, providing that certain temporary loan certificates may be counted, was omitted from the Revision as temporary. 2 Commissioners' Draft of U. S. Rev. Stats. 2483.

“Treasury notes” are issued in payment for silver bullion, under the Act of July 14, 1890, on substantially the same footing as “United States notes;” but as they are not so called, the two terms are not used synonymously, and they are not receivable on deposit for the currency certificates hereby authorized. 20 A. G. Op. 317, 319.

SECT. 5194. [Redemption of Such Certificates]. — “The power conferred on the Secretary of the Treasury, by the preceding section, shall not be exercised so as to create any expansion or contraction of the currency; and United States notes for which certificates are issued under that

section, or other United States notes of like amount, shall be held as special deposits in the Treasury and used only for redemption of such certificates."

See note, § 5220, *infra*.

SECT. 5195. [**Reserve Deposit in Central Reserve City**]. — "Each association organized in any of the cities named in section fifty-one hundred and ninety-one may keep one-half of its lawful-money reserve in cash deposits in the city of New York. But the foregoing provision shall not apply to associations organized and located in the city of San Francisco for the purpose of issuing notes payable in gold. This section shall not relieve any association from its liability to redeem its circulating notes at its own counter at par in lawful money on demand."

See § 3 of the Act of 1874, cited in note to § 5191. *Wright v. Merchants' Bank*, 1 Flippin, 568; *Stanton v. Wilkeson*, 8 Ben. 357.

SECT. 5196. [**Banks Take Circulation at Par**]. — "Every national banking association formed or existing under this Title shall take and receive at par, for any debt or liability to it, any and all notes or bills issued by any lawfully organized national banking association. But this provision shall not apply to any association organized for the purpose of issuing notes payable in gold."

SECT. 5197. [**Interest**]. — "Any association may take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, and no more, except that where by the laws of any State a differ-

ent rate is limited for banks of issue organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this Title. When no rate is fixed by the laws of the State, or Territory, or District, the bank may take, receive, reserve, or charge a rate not exceeding seven per centum, and such interest may be taken in advance, reckoning the days from which the note, bill, or other evidence of debt has to run. And the purchase, discount, or sale of a *bona fide* bill of exchange, payable at another place than the place of such purchase, discount, or sale, at not more than the current rate of exchange for sight drafts in addition to the interest, shall not be considered as taking or receiving a greater rate of interest."

See *Talbott v. Silver Bow County*, 139 U. S. 438, 442; *Schuyler Nat. Bank v. Bollong*, 150 U. S. 85, 88; *National See Bank of Gloversville v. Wells*, 15 Hun, 51; *Barbour v. Bank*, 50 Ohio St. 90; *Guild v. First Nat. Bank*, 4 So. Dak. 566. See 46 Am. State Rep. 185, *note*. "Or district" was here added in the fourth line in preparing the Rev. Stats. 2 Commissioners' Draft of U. S. Rev. Stats. 2483.

The phrase "banks of issue," employed in this section, does not embrace savings and deposit banks. *Clarion Nat. Bank v. Gruber*, 87 Penn. St. 468. A note made and signed in Washington, D. C., but dated at Leavenworth, Kansas, and sent to a national bank there, which discounted it, is governed, as to the rate of interest, by the laws of Kansas. It is not usurious for a bank, on discounting a note, to take out interest in advance. A contract for a loan of money at a rate of interest legal under the laws of the State where it was made, and where the money is to be advanced, though payment of the note is to be made in a State where the rate of interest is less, is not usurious, if it is not a mere device to evade the laws of the

State where payment is to be made. *Second Nat. Bank v. Smoot*, 2 McArthur, 371. National banks are placed on an equality with natural persons only as to the rate of interest, and not as to the character of the contracts they are authorized to make; and that rate thus ascertained is made applicable both to loans and discounts, if there is any difference between them. It is not intimated or implied that if, in any State, a natural person may discount paper, without regard to any rate of interest fixed by law, the same privilege is given to national banks. The privilege only extends to charging some rate of interest, allowed to natural persons, which is fixed by the State law. *National Bank v. Johnson*, 104 U. S. 271; *re Wild*, 11 Blatch. 243.

That clause of this section which limits national banks to seven per centum is violated by discounting paper in a State, the laws of which permit natural persons to reserve and pay such rate of interest as they may agree upon, if such a bank is a party to an agreement which reserves to it more than seven per centum. *National Bank v. Johnson, supra*. Under a statute of New York forbidding a corporation to plead the defence of usury, which the highest court of the State construed to mean that the rate of interest which a corporation may pay is not fixed or limited, a national bank which charged a New York corporation more than seven per centum interest was held to have forfeited the interest on the loan. *Re Wild*, 11 Blatch. 243. A national bank may charge and take the same rate of interest as any State bank of issue (*First Nat. Bank v. Tinstman*, 36 Leg. Int. 228; *Tiffany v. Nat. Bank of Missouri*, 18 Wall. 409), except such banks of issue as have been permitted a higher than the legal rate by special act of the legislature. *Duncan v. First Nat. Bank*, 11 Bank. Mag. 787; 6 Weekly Notes of Cases (Penn.), 159.

"*Discount*" here includes the purchase of accepted drafts not indorsed by the holder, when the discount rate is greater than that of lawful interest under the laws of the State. *Danforth v. National State Bank*, 48 Fed. 271. A

national bank may charge any rate of interest allowed by the State law. *Union Nat. Bank v. Louisville, &c. Ry. Co.*, 145 Ill. 208; *Wolverton v. Exchange Nat. Bank*, 11 Wash. 94; *California Nat. Bank v. Ginty*, 108 Cal. 148.

"Fixed by the laws." This means "allowed by the laws," and not necessarily a rate expressed in the laws. The national law adopts the State law, and permits to national banks what the State law allows to its citizens and to the banks organized by it. *Daggs v. Phoenix Bank*, 177 U. S. 549, 555, and 53 Pac. 201 (Arizona).

SECT. 5198. [Penalty for Unlawful Interest].— "The taking, receiving, reserving, or charging a rate of interest greater than is allowed by the preceding section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same, provided such action is commenced within two years from the time the usurious transaction occurred."

This section was amended by the Act of Feb. 18, 1875, ch. 80 (18 St. 320), by adding the following —

"That suits, actions, and proceedings against any association under this Title may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located, having jurisdiction in similar cases."

See *Knapp v. Williamsport Nat. Bank*, 15 Fed. 333; *Pacific Nat. Bank v. Mixter*, 124 U. S. 721, 726; *Johnson v. Gloversville Nat. Bank*, 74 N. Y. 329; *First Nat. Bank of Whitehall v. Lamb*, 50 Id. 95; *Morehouse v. Bank of Oswego*, 98 Id. 503, reversing 30 Hun, 628; *Talmage v. Third Nat. Bank*, 91 N. Y. 531; *Adams v. Daunis*, 29 La. Ann. 315; *Continental Nat. Bank v. Folsom*, 3 So. E. 269; *Brown v. Second Nat. Bank of Erie*, 72 Penn. St. 209; *Stephens v. Monongahela Bank*, 88 Id. 157; *Central Nat. Bank v. Richland Nat. Bank*, 52 How. Pr. 136; *Rhoner v. First Nat. Bank of Allentown*, 14 Hun, 126; *Allen v. Bank of Xenia*, 23 Ohio St. 97; *Kinser v. Farmers' Nat. Bank*, 13 N. W. Rep. 59. As to *Leather Manfrs Bank v. Cooper*, 120 U. S. 778, see note to § 5133; as to *Holmes v. Nat. Bank*, 18 S. C. 31, see note to § 5242.

Under § 5198 the penalty recoverable by suit against the bank is twice the whole amount of the interest actually paid, and not twice the amount of the excess over the legal rate (*Hill v. Barre Nat. Bank*, 15 Fed. 432), whether the amount is paid in one or several payments. *Hintermister v. First Nat. Bank*, 64 N. Y. 212; *Nat. Bank of Madison v. Davis*, 8 Biss. 100; 6 Cent. L. J. 106; *Crocker v. Nat. Bank*, 4 Dillon, 358; *Farmers' Nat. Bank v. Dearing*, *supra*. But in *Hintermister v. First Nat. Bank*, *supra*, the plaintiff was allowed to recover only twice the amount of illegal interest paid. And the plaintiff may recover such as accrues after maturity of the note, as well as what accrues before. *Bank of Uniontown v. Stauffer*, 1 Fed. 187; *Shunk v. First Nat. Bank of Galion*, 22 Ohio St. 508. The principal of the debt is not forfeited because of the usury. *Cheek v. Merchants' Nat. Bank*, 10 Heisk. 618, *note*; *Shinkle v. First Nat. Bank of Ripley*, 22 Ohio St. 516; *First Nat. Bank of Peterborough v. Childs*, 133 Mass. 248; *Citizens' Nat. Bank v. Leming*, 8 Int. Rev. Rec. 132; *Farmers' Nat. Bank v. Dearing*, *supra*.

"*Knowingly done.*" The defendant in a suit upon a bill of exchange, if he alleges usury, must make it appear that

the bank knowingly received or reserved an amount in excess of the statutory rate of interest, and the current exchange of sight drafts. If there is no proof of the rate of exchange, the bank will be entitled to recover. *Wheeler v. National Bank*, 96 U. S. 268.

Only the sum lent, without interest, can be recovered when illegal interest has been knowingly stipulated for, but not paid; while, if such illegal interest has been paid, twice the amount so paid can be recovered in an action of debt or suit in the nature thereof against the offending bank. *Barnet v. Cincinnati Nat. Bank*, 98 U. S. 555; *Driesback v. National Bank*, 104 Id. 52; *Uniontown Nat. Bank v. Stauffer*, 1 Fed. 187. If the bank sues upon the last of a series of notes, on which the interest is at the legal rate, but which incorporates usurious interest charged on some of the earlier notes, it cannot recover the illegal interest so incorporated, nor any interest upon the renewal notes from the date of the reduction to the legal rate; but the illegal excess cannot be applied in that suit by way of set-off, or payment, or counter-claim, the defendant's remedy being in the penal action brought under this section. *Barnet v. Cincinnati Nat. Bank*, *supra*; *F. & M. Bank of Mercer v. Hoagland*, 7 Fed. 159; *Cake v. Lebanon Nat. Bank*, 86 Penn. St. 303; *Cadiz Bank v. Slemmons*, 34 Ohio St. 142; *Higley v. Beverley Nat. Bank*, 26 Id. 75; *Merchants' Nat. Bank v. Myers*, 74 N. C. 514; *Clarion Nat. Bank v. Gruber*, 91 Penn. St. 377; *Fayette County Bank v. Dushane*, 96 Id. 340; *Auburn Nat. Bank v. Lewis*, 81 N. Y. 15; *Peterborough Nat. Bank v. Childs*, 133 Mass. 248; *Stephens v. Monongahela Bank*, 111 U. S. 197; *Hade v. McVay*, 31 Ohio St. 231; *Wiley v. Starbuck*, 44 Ind. 298. *Contra*, *Overholt v. Mt. Pleasant Nat. Bank*, 82 Penn. St. 490; *Lucas v. Government Nat. Bank*, 78 Id. 228; *Brown v. Erie Nat. Bank*, 72 Id. 209; *Stephens v. Monongahela Bank*, 88 Id. 157; *Auburn Nat. Bank v. Lewis*, 75 N. Y. 516; *Peterborough Nat. Bank v. Childs*, 130 Mass. 519. See *National State Bank of Newark v.*

Boylan, 2 Abb. N. C. 216. At any time up to the time of final payment of the principal, or up to the time of entering judgment, the bank may consider the excessive interest paid on account of the loan, and so apply it, and lessen the principal. And the cause of action is not complete until payment of the loan is actually made or judgment entered therefor. *Duncan v. First Nat. Bank*, 11 Bank. Mag. 787; 6 W. N. C. 159. The two years do not begin to run until one or the other of these things have occurred. *Id.*

Only the person paying the interest, or his legal representatives, and not his creditors, can recover the forfeiture here provided for. *Barrett v. Shelbyville Bank*, 85 Tenn. 426. The assignee of a bankrupt is his legal representative. *Crocker v. National Bank*, 4 Dillon, 358; *Wright v. First Nat. Bank of Greensburg*, 18 Alb. L. J. 115. And so is the receiver of an insolvent corporation its legal representative. *Barbour v. National Exchange Bank*, 12 N. E. Rep. 5; *Lazear v. National Union Bank*, 2 Br. N. B. Cas. 261.

An accommodation indorser without consideration is entitled to the same benefit by way of set-off or rebate-ment of the usurious interest as the maker. *National Bank of Auburn v. Lewis*, 75 N. Y. 516. The usurious interest may be recovered by the person who paid it, though the principal debt may not have been paid. *Stout v. Eunis Nat. Bank*, 8 S. W. Rep. (Tex.) 808; *Lynch v. National Bank*, 22 W. Va. 554.

State courts have jurisdiction of suits instituted for such recovery. *Ordway v. Central Nat. Bank*, 47 Md. 217; *Pickett v. Merchants' Nat. Bank*, 32 Ark. 346; *Hade v. McVay*, 31 Ohio St. 231; *National Bank of Peterborough v. Childs*, 133 Mass. 248; *Lebanon Nat. Bank v. Karmany*, 98 Penn. St. 65; *Lynch v. National Bank*, 22 W. Va. 554; *Dow v. Irasburgh Nat. Bank*, 50 Vt. 112. They also have jurisdiction of actions of contract brought by the resident of the State against a national bank located in another

State, except such as have committed or contemplate committing an act of insolvency. *Robinson v. National Bank of New Berne*, 58 How. Pr. 306, 81 N. Y. 385; *National Shoe & Leather Bank v. Mechanics' Nat. Bank*, 89 Id. 467. After a judgment in a Federal court against a national bank, for taking unlawful interest, an action cannot be maintained in the State court against the same bank to recover the excess above the legal interest. *Hill v. Barre Bank*, 56 Vt. 582. If a bank discounts a note at a usurious rate of interest, paying the borrower the proceeds less the interest, and in a suit to recover the loan the borrower pleads the usury, the bank will recover the face of the note less the entire interest taken out, received or reserved, and no more. If the note thus discounted is renewed for the same amount, the borrower paying usurious interest in advance, in a suit on the note, the defendant may recoup double the amount of the entire interest paid on renewal, or in an independent action of debt he may recover from the bank double the amount of the entire interest thus paid. *National Bank v. Davis*, 8 Biss. 100. Where a national bank gave its debtor an extension of time in consideration of his transferring to it, before maturity, a negotiable note as collateral and making advance payment of usurious interest for the extended period, and he indorsed the note so as to make the bank a party and bind it for its due presentation and for notice of non-payment, the statute was held not to make the contract of indorsement void, and such effect cannot be given it by a court. The discounting of a note at an unlawful rate of interest will not discharge the sureties in the absence of fraud. *First Nat. Bank of Columbus v. Garlinghouse*, 22 Ohio St. 492. The taking of illegal interest is not a fraud upon creditors in itself. *Appeal of Second Nat. Bank of Titusville*, 85 Penn. St. 528. Where a State statute authorized parties to agree in writing for a higher rate of interest than the legal rate, it was held that national banks could make a similar agreement. *Wiley v. Starbuck*, 44 Ind. 298. No

forfeitures can be imposed upon national banks for stipulating for or receiving illegal interest, except such as are provided for in the United States statutes. *National Bank v. Davis*, *supra*; *Farmers' Nat. Bank v. Dearing*, 91 U. S. 29; *National Exchange Bank v. Moore*, 2 Bond, 170. The amendment to this section expressly confers on the State courts concurrent jurisdiction with the Federal courts in "suits, actions, and proceedings against any association under the banking act." *First Nat. Bank of Tecumseh v. Overman*, 22 Neb. 116.

If illegal interest is paid on a note by one joint maker thereof, the other joint maker cannot recover double the amount so paid. *Timberlake v. First Nat. Bank*, 43 Fed. 231; *First Nat. Bank v. Rowley*, 52 Kansas, 394; *Teague v. First Nat. Bank*, 5 Kans. App. 300. Such double amount, when recoverable, is a penalty. *Osborn v. First Nat. Bank*, 154 Penn. St. 134. This section distinguishes between the reserving and the charging and receiving of excessive interest; interest illegally reserved is simply forfeited, but the bank is liable only to the person who paid it, for double the amount of illegal interest actually charged and received. An assignee for creditors is not his assignor's "legal representative" within this section. *Osborn v. First Nat. Bank*, 175 Penn. St. 494; see *Scottish M. & L. Inv. Co. v. McBroom*, 6 New Mex. 573; *Danforth v. Nat. State Bank*, 48 Fed. 271; *First Nat. Bank v. Grimes*, 49 Kansas, 219; *Bobo v. People's Nat. Bank*, 92 Tenn. 444; *Davey v. First Nat. Bank (So. Dak.)*, 66 N. W. Rep. 122; *Rockwell v. Farmers' Nat. Bank*, 4 Col. App. 562; *Nat'l State Bank v. Brainard*, 61 Hun, 339; *Boerner v. Traders' Nat. Bank*, 90 Texas, 443; *Colgin v. City Nat. Bank (Texas)*, 40 S. W. 634; *Marion Nat. Bank v. Thompson*, 101 Ky. 277. Interest reserved includes usury which has become part of a new note given in renewal, and such interest is to be eliminated. *Brown v. Marion Nat. Bank*, 92 Ky. 607, as construed in *Snyder v. Mt. Sterling Nat. Bank (Ky.)*, 21 S. W.

Rep. 1050; First Nat. Bank v. Turner, 3 Kana. App. 352; Same v. McInturff, Id. 536. A *bona fide* sale of a note, on which usurious interest is charged, by one bank to another, relieves the seller of the penalty. First Nat. Bank v. Miltonberger, 33 Neb. 847.

The remedy here given is exclusive, and State laws are inapplicable. Haseltine v. Central Bank, 183 U. S. 132, 136; Schuyler Nat. Bank v. Gadsden, 191 Id. 451; Citizens' Nat. Bank v. Gentry (Ky.), 56 L. R. A. 673, and *note*; Charleston Nat. Bank v. Bradford, 51 W. Va. 255; First Nat. Bank v. McEntire, 112 Ga. 232. They apply to artificial as well as to natural persons. Albion Nat. Bank v. Montgomery, 54 Neb. 681. The penalty may be recovered in a State court. McCreary v. First Nat. Bank, 109 Tenn. 128. See *In re* Hayt, 79 N. Y. S. 845.

It was held in Kentucky that the statutes of that State, prescribing certain duties for assignees for creditors, made them "legal representatives" within this section. Louisville Trust Co. v. Kentucky Nat. Bank, 87 Fed. 143, 145; Lealos v. Union Nat. Bank, 9 No. Dak. 60. Such an assignee who, in order to prevent a sacrifice of valuable collateral, paid to the pledgee several debts with usurious interest and received the collateral, may recover back twice the amount of the entire interest, and not merely the excess over the legal rate. Louisville Trust Co. v. Kentucky Nat. Bank, 87 Fed. 143; Lake Benton First Nat. Bank v. Watt, 184 U. S. 151, 155; Louisville Trust Co. v. Kentucky Nat. Bank, 102 Fed. 442; Talbot v. First Nat. Bank, 106 Iowa, 361; Watt v. First Nat. Bank, 76 Minn. 458.

The exemption of usury is not to be extended beyond the clear intent of the Federal statute. Gadsden v. Thrush, 58 Neb. 340; 56 Id. 565. Sect. 5198, enabling a person paying usurious interest to a national bank on discounting and renewing notes to recover by action twice the amount so paid, is exclusive of other remedies, although in the absence of such a statute the defence might be made by

way of set-off or credit upon the original demand. *Haseltine v. Central Bank*, 183 U. S. 130; 55 S. W. 1015; 56 Id. 895; *Brown v. Marine Nat. Bank*, 169 U. S. 418; *Pardoe v. Iowa State Nat. Bank*, 106 Iowa, 345; *Tucker v. Alexandroff*, 183 U. S. 424; *Watt v. First Nat. Bank*, 76 Minn. 458; 79 Id. 266; *Citizens' Nat. Bank v. Donnell*, 172 Mo. 384; *Charleston Nat. Bank v. Bradford*, 51 W. Va. 255; *First Nat. Bank v. Hunter*, 109 Tenn. 91. The statute distinguishes between reserving excessive interest, which is merely to be forfeited, and the charging and receiving of such interest, which latter alone renders the bank liable for double interest and destroys the interest-bearing quality of the paper. *Osborn v. First Nat. Bank*, 175 Penn. St. 494; *Bobo v. People's Nat. Bank*, 92 Tenn. 444; *Quint v. First Nat. Bank*, 9 Kans. App. 474. See *Faulkner v. Marion Nat. Bank*, 19 Ky. Law Rep. 1268; *Citizens' Nat. Bank v. Forman's Assignee*, 111 Ky. 206; *Second Nat. Bank v. Fitzpatrick*, Id. 228.

It is the interest charged, not the interest for which a forfeiture might be enforced, that the statute regards as illegal. *Talbot v. Sioux City First Nat. Bank*, 185 U. S. 172, 180; *First Nat. Bank v. Hunter*, 109 Tenn. 91.

"Commenced within two years from the time the usurious transaction occurred." — If all actual payments in excess of the legal rate were made more than two years before the defendant in a suit on the note filed his plea of usury, the amount paid cannot be recovered nor credited upon the principal of the note. *National Bank v. Davis*, 8 Biss. 100. The "usurious transaction" from the date of which the limitation of the statute begins to run is the time when the usurious interest was actually paid, and not the time when it was agreed to be paid. *Dangerfield Nat. Bank v. Ragland*, 181 U. S. 45; 51 S. W. 661; *First Nat. Bank v. Smith*, 36 Neb. 199; *Smith v. First Nat. Bank*, 42 Neb. 687; *Lanham v. Same*, Id. 757; *Norfolk Nat. Bank v. Schwenk*, 46 Neb. 381; *Bobo v. People's Nat. Bank*, 92 Tenn. 444; see *Talbot v. Sioux Nat. Bank*, 111

Iowa, 582; *Lasater v. First Nat. Bank* (Tex. Civ. App.), 72 S. W. 1054, 1057; *First Nat. Bank v. Denson*, 115 Ala. 650. The statute of limitations applies to a counterclaim for usurious interest under a contract on which a national bank sues as plaintiff. *First Nat. Bank v. McCarthy* (So. Dak.), 100 N. W. Rep. 14.

The amendment of 1875 relates to transitory actions only, and not to such actions as are by law local in their character. Hence a national bank may be sued in a State court in a local action in any other county or city than that where the bank is located. *Casey v. Adams*, 102 U. S. 66. The amendment of 1872 relates only to actions to recover usurious interest, and does not affect the jurisdiction of State courts in other matters. *New Orleans Nat. Bank v. Adams*, 3 Woods, 21. Section 30 of the Act of June 3, 1864, is remedial as well as penal, and is to be liberally construed to effect the legislative object. *Farmers' Nat. Bank v. Dearing*, 91 U. S. 29.

National banks may sue in the Federal courts, on the ground of diverse citizenship, as well as other corporations and individual citizens. *Petri v. Commercial Nat. Bank*, 142 U. S. 644, 647, 651. The effect of the cited amendment of 1875 was to give to State courts concurrent jurisdiction of actions for penalties against national banks, and their exemption from suit in other counties than that of their location could be waived. *First Nat. Bank v. Morgan*, 132 U. S. 141; *Endres v. First Nat. Bank*, 66 Minn. 257.

SECT. 5199. [*Surplus and Dividends*]. — "The directors of any association may semiannually declare a dividend of so much of the net profits of the association as they shall judge expedient; but each association shall, before the declaration of a dividend, carry one-tenth part of its net profits of the preceding half year to its surplus fund until the same shall amount to twenty per centum of its capital stock."

McDonald *v.* Williams, 174 U. S. 397, 399. The surplus fund which a national bank is required to reserve from its net profits is not excluded in the valuation of its shares for taxation. *Stafford Nat. Bank v. Dover*, 58 N. H. 316; *First Nat. Bank v. Peterborough*, 56 Id. 38.

SECT. 5200. [Restriction on Loans]. — "The total liabilities to any association, of any person, or of any company, corporation, or firm for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed one-tenth part of the amount of the capital stock of such association actually paid in. But the discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper actually owned by the person negotiating the same shall not be considered as money borrowed."

Referred to in *Briggs v. Spaulding*, 141 U. S. 132, 143, 161; *Thompson v. Sioux Falls Nat. Bank*, 150 U. S. 231, 293; *California Nat. Bank v. Thomas*, 171 U. S. 441; *Cockrill v. Cooper*, 86 Fed. 7, 13; *Witters v. Sowles*, 43 Id. 405; *Stephens v. Overstolz*, Id. 771; note to § 5239; *Corcoran v. Batchelder*, 147 Mass. 541, 542; *Stephens v. Monongahela Bank*, 88 Penn. St. 157; *Movius v. Lee*, 24 Blatch. 291; 30 Fed. 298; *Witters v. Foster*, 26 Id. 737; *Fowler v. Scully*, 72 Penn. St. 456; *Second Nat. Bank v. Burt*, 93 N. Y. 233; see note to § 5202.

Public policy does not require nor did Congress intend that an excess of loans beyond one-tenth part of the amount of the capital stock actually paid in should enable the borrower to avoid the payment of the money he actually received. *Gold Mining Co. v. National Bank*, 96 U. S. 640; *Shoemaker v. Mechanics' Bank*, 2 Abb. 416; *O'Hare v. Second Nat. Bank*, 77 Penn. St. 96; *Wroten's Assignee v. Armat*, 31 Gratt. 228; *Corcoran v. Batchelder*,

147 Mass. 541; *Duncomb v. N. Y. H. & N. R. R.*, 84 N. Y. 190. A contract entered into contrary to this section is not void, and if a bank which makes such a contract is punishable for so doing, it must be at the instance of the Government, and not of an individual. *Wyman v. Citizens' Nat. Bank*, 29 Fed. 734; *Stewart v. National Union Bank*, 2 Abb. U. S. 424. Under § 5239 a director of a national bank who makes or assents to the making of a loan contrary to this section, is personally and individually liable for loss occasioned thereby; but this rule does not apply where a director is the borrower. *Witters v. Sowles*, 31 Fed. 1.

Personal liability of the directors under this section and § 5204 is not enforceable in a suit at law. *Welles v. Graves*, 41 Fed. 459.

In Vermont a cause of action against a director of a national bank, for neglect of duty as a director in violating the provisions of §§ 5200, 5202, and 5204, not involving the personal misappropriation of the property of the bank, does not survive. *Witters v. Foster*, 23 Blatch. 457.

SECT. 5201. [Associations must not Hold their Own Stock].
—“No association shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale; or, in default thereof, a receiver may be appointed to close up the business of the association, according to § 5234.”

This provision is referred to in *Van Allen v. Assessors*, 3 Wall. 573; *Concord First Nat. Bank v. Hawkins*, 174 U. S. 364, 369; *Scott v. Deweese*, 181 Id. 202, 211; *Lan-*

try *v. Wallace*, 182 Id. 536, 551, 552; *Brown v. Ohio Nat. Bank*, 18 App. D. C. 598, 606; *Stanton v. Wilkeson*, 8 Ben. 357; *Wright v. Merchants' Bank*, 3 Cent. L. J. 351; *Johnson v. Laffin*, 5 Dillon, 65; *Bank of Charlotte v. Exchange Bank*, 92 U. S. 122; *Stephens v. Monongahela Bank*, 88 Penn. St. 157; *Fowler v. Scully*, 72 Id. 456; *Rich v. State Bank*, 7 Neb. 201; *Prosser v. First Nat. Bank*, 106 N. Y. 677; 13 N. E. Rep. 287, 289. See § 3 of St. 1876, cited in note, § 5220.

The prohibition against the bank loaning on its own stock does not render the bank liable for the proceeds of a sale of its shares left by a shareholder as security for a loan, who authorized the bank to sell them in case of his failure to pay. *Xenia Bank v. Stewart*, 107 U. S. 676.

No penalty being imposed for a violation of the first clause of this section, the Government alone can insist upon such violation, at least if it was not objected to before the contract was made or while the bank holds the security. *Walden Nat. Bank v. Birch*, 130 N. Y. 221.

A bank by-law indorsed on a stock certificate, prohibiting a stockholder indebted to the bank from transferring his certificate, is void as being in contravention of this section. *Feckheimer v. Exchange Bank*, 79 Va. 80; *Conklin v. Second Nat. Bank*, 45 N. Y. 655; *Evansville Nat. Bank v. Metropolitan Nat. Bank*, 2 Biss. 527; 10 Am. L. Reg. N. S. 774. The following cases would not now be followed: *Rosenback v. Salt Springs Nat. Bank*, 53 Barb. 495; *Young v. Vough*, 8 C. E. Green (N. J.), 325; 9 Id. 535. A bank has the right to hold a cash dividend as pledged for the indebtedness of a shareholder to the bank. And a bank may attach the shares of a stockholder for his debt to the bank. *Hagar v. Union Nat. Bank*, 63 Maine, 509.

A sale of the bank's stock to it by the president cannot be ratified, if not made to prevent a loss. *Bundy v. Jackson*, 24 Fed. 628. It is a loan within the meaning of this section for one bank to place its funds on permanent

deposit with another. *Bank v. Lanier*, 11 Wall. 369. The making of a loan by a national bank to its stockholders does not give the bank a lien on the shares of such stockholders. *Id.* Nor is such a lien created where the articles of association and by-laws of the bank directly provide for it, because such provisions are against the spirit of this statute. *Bullard v. Bank*, 18 Wall. 589. Such a lien is not a regulation of the business of the bank, or a regulation for the conduct of its affairs within the meaning of Rev. Stats. § 5133. *Id.* As to the right of an assignee of a bankrupt against a bank for a refusal to transfer stock on which it claims a lien, see *Meyers v. Valley Nat. Bank*, 18 N. B. Reg. 34.

The sale which a bank is required to make of its own stock is a real and not a fictitious sale. If the president and cashier make an unauthorized sale of the bank's stock to themselves, and it is ratified, they will not be allowed to set up their own illegal or unauthorized act to avoid their contract; nor to allege that the sale and purchase were merely colorable, or to avoid a forfeiture of the bank's charter, or for any other deceptive or illegal purpose. *Bundy v. Jackson*, *supra*.

SECT. 5202. [*Restriction on Bank's Liability*]. — "No association shall at any time be indebted, or in any way liable, to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise, except on account of demands of the nature following:

"First. Notes of circulation.

"Second. Moneys deposited with or collected by the association.

"Third. Bills of exchange or drafts drawn against money actually on deposit to the credit of the association, or due thereto.

“Fourth. Liabilities to the stockholders of the association for dividends and reserve profits.”

See *Bullard v. Bank*, 18 Wall. 589; *Eastern Townships' Bank v. Vermont Bank of St. Albans*, 22 Fed. 186; *Witters v. Foster*, 26 Id. 737; *Rich v. State Bank*, 7 Neb. 201. This provision gives a rule for the Government of the bank, and does not make a loan void which is here prohibited. *Weber v. Spokane Nat. Bank*, 64 Fed. 208, 211; 50 Id. 735. The acceptance of a check when the drawer has no funds on deposit, loans the bank's credit rather than money, and if not otherwise objectionable is not within the restriction of § 5200, or as a liability within the limit of § 5202. 17 A. G. Op. 471.

SECT. 5203. [Improper Use of Bank Circulation].—“No association shall, either directly or indirectly, pledge or hypothecate any of its notes of circulation for the purpose of procuring money to be paid in on its capital stock, or to be used in its banking operations, or otherwise; nor shall any association use its circulating notes, or any part thereof, in any manner or form, to create or increase its capital stock.”

SECT. 5204. [Unearned Dividends Prohibited].—“No association, or any member thereof, shall, during the time it shall continue its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained by any such association equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by any association, while it continues its banking operations, to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. All debts due

to any associations, on which interest is past due and unpaid for a period of six months, unless the same are well secured, and in process of collection, shall be considered bad debts within the meaning of this section. But nothing in this section shall prevent the reduction of the capital stock of the association under § 5143."

See *Cockrill v. Cooper*, 86 Fed. 8; and note to § 5200. Directors who procure the declaration of a dividend without net profits to pay it, are not criminally liable for conspiracy to defraud the bank. *United States v. Britton*, 108 U. S. 199. Nor are they personally liable, in the absence of bad faith, for losses to the bank from their error of judgment as to the value of the assets. *Witters v. Sowles*, 31 Fed. 1.

By receiving his proportion of a dividend declared by the directors, a stockholder of a solvent bank does not withdraw any of its capital within this section, even though the dividend was declared on the capital, if he, in good faith, believed it to be declared on the profits. *McDonald v. Williams*, 174 U. S. 397.

SECT. 5205. [Assessment for Impairment of Capital].
—"Every association which shall have failed to pay up its capital stock, as required by law, and every association whose capital stock shall have become impaired by losses or otherwise, shall, within three months after receiving notice thereof from the Comptroller of the Currency, pay the deficiency in the capital stock, by assessment upon the shareholders *pro rata* for the amount of capital stock held by each; and the Treasurer of the United States shall withhold the interest upon all bonds held by him in trust for any such association, upon notification from the Comptroller of the Currency, until otherwise notified by him. If any such association shall fail to pay up its capital stock,

and shall refuse to go into liquidation, as provided by law, for three months after receiving notice from the Comptroller, a receiver may be appointed to close up the business of the association, according to the provisions of § 5234."

Stanton v. Wilkeson, 8 Ben. 357; *Wright v. Merchants' Bank*, 3 Cent. L. J. 351; *Eaton v. Pacific Bank*, 144 Mass. 260; *Cogswell v. Second Nat. Bank (Conn.)*, 56 Atl. 574. Amended by § 4 of the Act of 1876, as stated in note to § 5220. A stockholder assessed with his assent under this section is not thereby relieved of his individual liability under § 5151. *Morrison v. Price*, 23 Fed. 217; *Delano v. Butler*, 118 U. S. 634.

A subscriber who pays in the amount of his subscription to an increase of the capital of a national bank becomes a stockholder, if he is so entered on the bank's books, though he does not take out a certificate. *Aspinwall v. Butler*, 133 U. S. 595; *Pacific Nat. Bank v. Eaton*, 141 U. S. 227; *Thayer v. Butler*, Id. 234.

After notice from the Comptroller that there is an impairment of a bank's capital and that an assessment on the stockholders is required, such assessment is to be made by the stockholders themselves, and, if made by the directors, is void. *Hulitt v. Bell*, 85 Fed. 98, 99; *Weinhard v. Commercial Nat. Bank*, 41 Oregon, 359. The stockholders have the right after such notice to elect to wind up the affairs of the bank under § 5220, instead of making the assessment. *Commercial Nat. Bank v. Weinhard*, 192 U. S. 243. Such an assessment is not enforceable against the stockholders personally, but only by subjecting the stock of persons refusing to pay. *Hulitt v. Bell*, *supra*. See, generally, *American Surety Co. v. Pauly*, 170 U. S. 133, 138; *McDonald v. Williams*, 174 Id. 397, 407; *Scott v. Deweese*, 181 Id. 202, 210; *Lantry v. Wallace*, 182 Id. 536, 552; *Rankin v. Fidelity Trust Co.*, 189 Id. 242, 250; *Merchants' Nat. Bank v. Fouché*, 103 Ga. 851.

SECT. 5206. [Prohibition against Uncurrent Notes].—“ No association shall at any time pay out on loans or discounts, or in purchasing drafts or bills of exchange, or in payment of deposits, or in any other mode pay or put in circulation the notes of any bank or banking association which are not, at any such time, receivable, at par, on deposit, and in payment of debts by the association so paying out or circulating such notes ; nor shall any association knowingly pay out or put in circulation any notes issued by any bank or banking association which at the time of such paying out or putting in circulation is not redeeming its circulating notes in lawful money of the United States.”

SECT. 5207. [Penalty for Pledging United States Notes or Bank Circulation].— “ No association shall hereafter offer or receive United States notes or national bank notes as security or as collateral security for any loan of money, or for a consideration agree to withhold the same from use, or offer or receive the custody or promise of custody of such notes as security, or as collateral security, or consideration for any loan of money. Any association offending against the provisions of this section shall be deemed guilty of a misdemeanor, and shall be fined not more than one thousand dollars and a further sum equal to one-third of the money so loaned. The officer or officers of any association who shall make any such loan shall be liable for a further sum equal to one-quarter of the money loaned ; and any fine or penalty incurred by a violation of this section shall be recoverable for the benefit of the party bringing such suit. Sec. 12 of the Act of July 12, 1882, provides that the provisions of this section shall apply to the United States certificates of gold and silver coin.”

See § 12 of the Act of 1882, stated in note, § 5133.

SECT. 5208. [**False Certification of Checks**]. — “It shall be unlawful for any officer, clerk, or agent of any national banking association to certify any check drawn upon the association unless the person or company drawing the check has on deposit with the association, at the time such check is certified, an amount of money equal to the amount specified in such check. Any check so certified by duly authorized officers shall be a good and valid obligation against the association; but the act of any officer, clerk, or agent of any association, in violation of this section, shall subject such bank to the liabilities and proceedings on the part of the Comptroller as provided for in § 5234.”

See § 13 of the Act of 1882, stated in the note to § 5133; *Stephens v. Monongahela Bank*, 88 Penn. St. 157; *Wright v. Merchants' Bank*, 3 Cent. L. J. 351; *Spurr v. United States*, 174 U. S. 728. This section does not invalidate an oral acceptance of, or promise to pay a check, there being at the time sufficient funds of the drawer in possession to meet it. *First Nat. Bank v. Merchants' Nat. Bank*, 7 W. Va. 544. It affirms the validity of the contract of certification, and as it expressly provides what consequences shall follow upon its violation, it clearly implies that no other consequences are so to follow. *Thompson v. St. Nicholas Nat. Bank*, 146 U. S. 240, 247. In an indictment under this section, as amended by § 13 of the Act of 1882, it is not necessary to allege that the bank delivered the check after certifying it. *United States v. Potter*, 56 Fed. 83, 97; 155 U. S. 438.

SECT. 5209. [**Penalty for Official Malfeasance**]. — “Every president, director, cashier, teller, clerk, or agent of any association who embezzles, abstracts, or wilfully misapplies any of the moneys, funds, or credits of the association, or

who, without authority from the directors, issues or puts in circulation any of the notes of the association; or who, without such authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree; or who makes any false entry in any book, report, or statement of the association, with intent, in either case, to injure or defraud the association or any other company, body politic or corporate, or any individual person, or to deceive any officer of the association or any agent appointed to examine the affairs of any such association; and every person who with like intent aids or abets any officer, clerk, or agent in any violation of this section, shall be deemed guilty of a misdemeanor, and shall be imprisoned not less than five years nor more than ten."

United States *v.* Farrington, 5 Fed. 343; *Ex parte* Hitz, 111 U. S. 766; *Ex parte* Bain, 121 Id. 1; Whittemore *v.* Amoskeag Nat. Bank, 134 U. S. 527; *In re* Claassen, 140 Id. 200, 205; Claassen *v.* United States, 142 Id. 140; Evans *v.* United States, 153 Id. 584, 587, 595; Hunt *v.* United States, 166 Id. 424; Wright *v.* Henkel, 190 U. S. 40, 58; United States *v.* Martin, 4 Cliff. 156; Porter *v.* United States, 91 Fed. 494; Hanover Nat. Bank *v.* First Nat. Bank, 109 Id. 421. The president does not violate this provision by procuring the discount of a note insufficiently secured, although he applies the money to his own use; nor is he criminally liable for permitting a depositor who has not paid his indebtedness to the bank, to withdraw his deposit. United States *v.* Britton, 108 U. S. 193. If an officer of a national bank permits a firm of which he is a member to overdraw its account with intent to defraud, he is punishable criminally under this section. United States *v.* Fish, 24 Fed. 585. This section punishes the embezzle-

ment of the property of national banks, but not of the property of individuals deposited with, and in the custody of such banks. *Commonwealth v. Tenny*, 97 Mass. 50. If a bank, through its governing board or its exchange committee, consents to the fraudulent acts of its officer before or at the time they were done, such officer cannot be punished; if they did not so consent, it is no defence that they afterwards learned of the transaction. *United States v. Youtsey*, 91 Fed. 864; *Rieger v. United States*, 107 Id. 916. This applies to agents in liquidation appointed by the stockholders. *United States v. Jewett*, 84 Fed. 142. The misapplication of the bank's assets by its president, who is appointed to close its affairs in liquidation, with authority to collect its credits, is within this section, for he is an "agent" as well as an official trustee for creditors. *Jewett v. United States*, 100 Fed. 832, 838.

"Embezzles."—This word appears to mean, whenever used to distinguish a crime which a person has the opportunity to commit by reason of some office or employment, some breach of confidence or trust, or some misuse of an opportunity. *United States v. Conant*, 9 Cent. L. J. 129; *United States v. Harper*, 33 Fed. 471. Embezzlement is a species of larceny, and is applicable to the stealing of property by clerks, agents, servants, and parties acting in fiduciary capacities. In order to constitute this crime it is necessary that the property embezzled should come lawfully into the hands of the party embezzling, and by virtue of the position of trust he occupies. *United States v. Lee*, 12 Fed. 816.

If the president of a bank, charged as a trustee with the administration of the funds of the bank, converts them to his own use, he embezzles and abstracts them, unless he shows authority for so doing. *Re Van Campen*, 2 Ben. 419.

In order to constitute embezzlement there must be an actual and lawful possession or custody of the property of another by virtue of some trust, duty, agency, or employment, committed to the party charged; and while so law-

fully in the possession and custody of such property, the person must unlawfully and wrongfully convert the same to his own use. It is not necessary that the accused should have been in the exclusive possession or custody at the time of the conversion to his own use. If it appears that the business and assets of the bank were actually or practically intrusted to the care and management of the defendant, so that by virtue of his position as vice-president, director, or agent, he had not merely access to, or a constructive holding of, but such actual custody of the funds, moneys, and credits of the association as enabled him to have and exercise control over the same, that would place him in the lawful possession thereof. If his position and employment gave the defendant a superior or a joint and concurrent possession with subordinate employes or agents of the bank, his possession would be lawful. *United States v. Harper*, 33 Fed. 471, 475.

"Abstracts."—This word as used in this section is not a word of settled technical meaning like "embezzle." It is a word of simple, popular meaning, without ambiguity. It means to take or withdraw from, so that to abstract the funds of the bank, or a portion of them, is to take and withdraw from the possession and control of the bank the moneys and funds alleged to be so abstracted. To constitute the offence within the meaning of this statute it is necessary that the moneys and funds should be abstracted from the bank without its knowledge and consent, with the intent to injure or defraud it or some other company or person, or to deceive some officer of the association, or an agent appointed to examine its affairs. *United States v. Northway*, 120 U. S. 327. The offence of abstraction is committed where one, for his own benefit, takes the property of another. It is not necessary that any position of trust should exist between the parties, or that the property should come lawfully into the possession of the party who abstracts it. *United States v. Lee*, 12 Fed. 816. To constitute the offence of abstracting the funds of a bank it

must appear that the defendant had official relations with it; that he took or withdrew, or directed the taking or withdrawal, of its moneys, funds, credits, or assets; that this was done without the knowledge or consent of the bank or of its board of directors; that the money or effects so taken and withdrawn were converted to the defendant's own use, or for the benefit and advantage of some person other than the association, and that this was done with intent to injure and defraud the association. No previous lawful possession is necessary in order to the commission of this offence, and it is not material by what means, contrivances, or devices the abstraction of the funds of the bank is effected and accomplished. *United States v. Harper*, 33 Fed. 147, 479.

"Wilfully misapplies." — *"Wilfully"* means designedly. It is not necessary that the party who misapplies should derive any benefit from the transaction. This is made clear by the use of the word "injure," in connection with the word "defraud." *United States v. Lee*, 12 Fed. 816; *United States v. Taintor*, 11 Blatch. 374. If the evidence shows that funds have been misapplied, the defendant cannot say that it was not done with guilty intent. *Id. Contra*, *United States v. Voorhees*, 9 Fed. 143. So far as the question of guilt or innocence under this section is concerned, there is no distinction between a loan in bad faith for the purpose of defrauding the bank, and an application of money with like intent in a form other than that of a loan. A loan of the moneys of a bank by its president in bad faith, for the purpose of defrauding the bank, is no loan in the sense of the law. *United States v. Fish*, 24 Fed. 585, 589. If the president of a bank gives false credits to a firm of which he is a member, and causes the checks drawn by such firm against such credits to be paid, the entries being made by him with the understanding that they were to be drawn against, he is guilty of a misapplication of the funds of the bank. *Id.*

The statute does not use the words "embezzles" and

"wilfully misapplies" as synonymous. In order to misapply the funds of the bank, it is not necessary that the officer charged should be in actual possession of them by virtue of a trust committed to him. He may abstract them from the other funds of the bank unlawfully, and afterwards criminally misapply them, or by virtue of his official relation to the bank, he may have such control, direction, and power of management as to direct an application of the funds in such a manner and under such circumstances as to constitute the offence of wilful misapplication. *United States v. Northway*, 120 U. S. 327; *United States v. Harper*, 33 Fed. 471, 477; *United States v. Fish*, 24 Id. 585, 589.

The wilful misapplication made an offence by this section means a misapplication for the use, benefit, or gain of the party charged, or of some company or person other than the association. To constitute the offence, there must be a conversion to his own use, or the use of some one else, of the moneys and funds of the association by the party charged. *United States v. Britton*, 107 U. S. 655; *United States v. Harper*, 33 Fed. 471, 477.

A director violates this clause if, knowing that he has no money to his credit in the bank, and no right to draw money therefrom, he obtains money from it to which he has no right by means of his overdraft made with intent to defraud, and converts the same to his own use in fraud of the bank. *United States v. Warner*, 26 Fed. 616. Abstraction and misapplication are a conversion to his own use by an officer, when the funds are not especially intrusted to his care. *Dow v. United States*, 82 Fed. 904; *United States v. Youtsey*, 91 Id. 864. Giving a fraudulent credit, and permitting it to be transferred as genuine on the bank's books, amounts to a criminal misapplication of money or funds. *Rieger v. United States*, 107 Fed. 916, 930.

"*False entry.*" — If the president directs a clerk employed in the bank to make false entries in its books, he is a principal in the offence, and the entries are, in

law, made by him. *Re Van Campen*, 2 Ben. 419; *United States v. Harper*, 33 Fed. 471, 480.

If the false entry is calculated to deceive, the making of it in the books of the association, with intent to deceive, is all that is necessary to bring the act within the meaning of the statute. The fact that its falsity may be exposed by an examination of other books of account does not render it any the less a false entry made with intent to deceive. The statute is not designed to punish only those officers who make false entries with intent to deceive examiners appointed before the false entries were made. *United States v. Britton*, 107 U. S. 655; *United States v. Harper*, 33 Fed. 471, 480. The words "any false entry in any book, report, or statement," are sufficiently comprehensive to forbid a falsification of the books of a national bank in any manner, whether by an original false entry or by changing by erasure a correct entry already made. In either event it is necessary to write in the books, — to make an entry of some sort, — and if the words or figures so written falsify the fact or transaction intended to be authenticated, the act is necessarily within the prohibition of the statute. *United States v. Crecilius*, 34 Fed. 30. An entry by the cashier as a "cash item," of a check which actually entered into a transaction of the bank is not a "false entry," although he knew the check to be worthless, since the statement is true. *United States v. Young*, 128 Fed. 111.

An understanding between certain depositors and a bank officer, that certain money was only to be used by the bank for the purpose of being shown to the examiner as bank funds, is within this section, and an entry of such sums as deposits is a false entry. *Peters v. United States*, 94 Fed. 127, 145. A voluntary false report of the condition of a bank, made to the comptroller by an officer of the bank, is within this section, even though it is not made in compliance with the request or call of the Comptroller. *Bacon v. United States*, 97 Fed. 35. When a

call is made upon a bank for a statement of overdrafts, the report should include overdrafts covered by "overdraft notes," unless discounted, and the proceeds thereof actually carried to the credit of the depositor on the books of the bank. *Bacon v. United States*, 97 Fed. 35.

Entries made at the direction of a cashier are the same as if he made them in person. *Peters v. United States*, 94 Fed. 127, 145. Evidence that a bank officer signed and verified reports containing false entries, will not justify his conviction, if it appears that such entries were not made by him or by his direction. *United States v. Booker*, 98 Fed. 291.

But an officer who verifies a report made up by a clerk is responsible for the statements contained in it, and cannot be heard to plead ignorance of them. *United States v. Allen*, 10 Biss. 90. This section includes a false entry in a report made to the Comptroller of the Currency. *United States v. French*, 57 Fed. 382; *Same v. Hughitt*, 45 Id. 47. But it is not an ingredient of the offence of making a false entry in a report of a national bank under this section that the report should be one which it is the legal duty of the bank to make. *United States v. Booker*, 80 Fed. 376, 378; disapproving *Same v. Potter*, 56 Id. 83, 97 (see s. c. 155 U. S. 438). See *Dow v. United States*, 82 Fed. 904. This statute includes a false entry made by an assistant cashier. *Cochran and Sayre v. United States*, 157 U. S. 286, 289; *Agnew v. Same*, 165 Id. 36. The offence of aiding and abetting may be committed by those who are not officers or agents of the bank. *Coffin v. United States*, 156 U. S. 432; 162 Id. 664.

"With intent to injure or defraud." — This term means nothing more than that general intent to injure or defraud, which always arises in contemplation of law when one wilfully or intentionally does that which is illegal or fraudulent; and which, in its necessary or natural consequence, must injure another. The intent may be shown, or may be conclusively presumed from the doing of the wrongful,

fraudulent, and illegal acts. The intent specified is presumed when the unlawful act which results in loss or injury is proved to have been knowingly committed. *United States v. Harper*, 33 Fed. 471, 481. The intent to defraud is to be inferred from the fact of embezzlement. *Re Van Campen*, 2 Ben. 419. The words "with intent, in either case, to injure or defraud" apply to embezzlement as well as to making false entries. *United States v. Voorhees*, 9 Fed. 143.

On the trial of the cashier of a national bank indicted under this section, the defendant offered evidence to prove that his taking moneys and funds of the bank, and using them in stock speculations carried on in his own name, by depositing them with a stockbroker as margins, were known to the president and some of the directors of the bank, and were sanctioned by them; and that such dealings of his with the funds of the bank were intended for the account and benefit of the bank, and were believed by him to have been sanctioned by the president and some of the directors, though there was no resolution of the board of directors authorizing or sanctioning them, such evidence being offered to disprove the averment in the indictment that the acts were done with "intent to injure and defraud" the bank. Held, that such evidence must be excluded. *United States v. Taintor*, 11 Blatch. 374.

The phrase "intent to injure or defraud" is the same as that used in indictments for forgery. There it refers to a general guilty intent, and such indictments are held conclusively proved when the act is proved to have been knowingly committed. The phrase has the same meaning in this statute, and the intent is to be proved in the same way. *United States v. Taintor*, 11 Blatch. 374, 378.

The honest exercise of official discretion, in good faith without fraud, for the advantage or supposed advantage of the association, is not punishable; but if official action be taken, not in the honest exercise of discretion, in bad faith for personal advantage and with fraudulent intent,

it is punishable. *United States v. Fish*, 24 Fed. 585, 588.

Any of the intents here set forth are sufficient, and the several intents may be cumulatively charged in the indictment. See *McKnight v. United States*, 97 Fed. 209; 111 Id. 735, 736; *United States v. German*, 115 Id. 987. See *United States v. Berry*, 85 Fed. 208; 96 Id. 846; *State v. Nicholls*, 50 La. An. 699. The "intent" does not necessarily involve malice or ill-will towards a bank; it is sufficient if the unlawful intent, if carried into execution, will necessarily or naturally injure or defraud. *United States v. Kenney*, 90 Fed. 257, 267. Whether or not a person had that intent may be inferred from the attending acts, circumstances, and surroundings. *Ibid.*; *United States v. German*, 115 Fed. 987. It is not a crime for a cashier to discount bad paper, or accept for collateral worthless securities, unless an intent to defraud the bank appears affirmatively. *United States v. Youtsey*, 91 Fed. 864, 870.

The *intent* is material and must be alleged, but intent to deceive one of the bank officers is sufficient. *Cochran and Sayre v. United States*, 157 U. S. 286, 294; *United States v. Means*, 42 Fed. 599. The offence is not established by showing unintentional or clerical errors or mistakes not intended to deceive: *United States v. Allen*, 47 Fed. 696; 10 Biss. 90; *Same v. Graves*, 53 Fed. 634; 165 U. S. 323; or acts performed at the request of the bank examiner. *United States v. Ege*, 49 Fed. 852.

The offence of making false entries contrary to this provision does not give an exclusive jurisdiction to the Federal courts so as to preclude an indictment in the State court for forgery. *Cross v. North Carolina*, 132 U. S. 131, 137; *In re Loney*, 134 U. S. 372, 375; see *New York v. Eno*, 155 U. S. 89, 99; *United States v. Buskey*, 38 Fed. 99; *In re Eno*, 54 Id. 669; *State v. Tuller*, 34 Conn. 280; *Hoke v. People*, 122 Ill. 511.

The Federal offence, as an infamous crime, cannot be

prosecuted by information. *Folsom v. United States*, 160 U. S. 121, 123; *United States v. Smith*, 40 Fed. 755. If begun in one State and completed in another, the Federal court in the latter has jurisdiction of its trial. *Putnam v. United States*, 162 U. S. 687.

As "misapplication" includes embezzlement, and is a misdemeanor, a defendant is only entitled to three peremptory challenges to the jury. *Jewett v. United States*, 100 Fed. 832, 840; *Tyler v. United States*, 106 Id. 137.

Indictment. — The different offences named in § 5209 may be joined in one indictment, if in separate counts. *United States v. Cadwallader*, 59 Fed. 677. The crimes named by this section are infamous, and must be prosecuted by indictment. *United States v. De Walt*, 128 U. S. 393; *United States v. Hade*, 10 Chi. Leg. News, 22.

An indictment for embezzlement under this section is fatally defective unless it alleges that it was done with intent to injure or defraud. *United States v. Conant*, 9 Cent. L. J. 129; *United States v. Britton*, 107 U. S. 655. An indictment alleged that the president of a bank misapplied \$25,000 of its money "by causing the said sum of \$25,000 to be credited to G. & W. on the books of the bank," &c. A credit of \$105,000 was shown by a single entry, \$25,000 of which the jury found was a misapplication. Held, an immaterial variance. *United States v. Fish*, 24 Fed. 585. Charging the defendant with committing the acts alleged against him in his capacity as "president and agent" does not vitiate the counts in which he is so described. *United States v. Northway*, 120 U. S. 327. A count charging embezzlement is good if it alleges that the moneys and funds alleged to have been embezzled were at the time in the possession of the defendant as president and agent, and were converted to his own use. This necessarily means that they had come into his possession in his official character, so that he held them in trust for the use and benefit of the association. *Id.*

An indictment against persons as aiders and abettors of

the director of a bank in misapplying the funds thereof is not good unless it alleges facts which show a misapplication of the funds of the bank by the director. *United States v. Warner*, 26 Fed. 616.

An indictment which alleges the making of a false entry with intent to deceive the Comptroller of the Currency, is bad, he not being an agent appointed to examine the affairs of national banks. *United States v. Bartow*, 10 Fed. 874. An allegation that the defendant made a false report of the condition of the bank may support a finding that he made a false entry in a report, the indictment containing the words "whereby, by means of a false entry therein by him made." *Id.*

In alleging the wilful misapplication of the funds of a bank by its president and agent it is not necessary to say that the funds charged to have been misapplied had previously come into the defendant's possession as president and agent (*United States v. Northway*, 120 U. S. 327); nor in charging a president with aiding and abetting F., the cashier of the bank, with the misapplication of its funds, to allege that the defendant then and there knew that said F. was such cashier. *Id.*

The words "wilfully misapplies" have not, like the word "embezzles," a settled technical meaning, and must, therefore, be supplemented by further averments showing how the misappropriation was made, and that it was unlawful. *Batchelor v. United States*, 156 U. S. 426, 429; *Graves v. United States*, 165 U. S. 323; *Agnew v. Same*, *Id.* 36. The property taken must be clearly specified, "funds" being too indefinite. *United States v. Greve*, 65 Fed. 488; see *Same v. Jewett*, 84 *Id.* 142.

An indictment following this section, charging that the accused was an officer; that, with intent to deceive, he made at a stated time and place a false entry on the books of the bank, which it describes, is sufficient, though it does not aver that the entry was made in the bank's due course of business and in one of its accounts, nor that

interest was due from the person named in the entry, nor that an examining agent had then been appointed. *United States v. Britton*, 107 U. S. 655. The death of the principal before indictment is not an obstacle to the prosecution and punishment of one charged with aiding and abetting. *Gallot v. United States*, 87 Fed. 446. Where an officer is charged with several offences in making at different times false entries, the offences may be charged in different counts of one indictment. *United States v. Berry*, 96 Fed. 842. If the offence is well described in any language, it seems sufficient; otherwise, if not well described, although the words of the statute are used. If the substance is there, the form is made immaterial by § 1024. *United States v. McClure*, 107 Fed. 268. An averment in an indictment that certain money is lawful, legal-tender money of the United States, is surplusage, and need not be proved. *Porter v. United States*, 91 Fed. 494. Upon an indictment charging an officer with the wilful misapplication of certain money, &c., by using the same to discount the unsecured note of a person known to be insolvent, such note is not the subject-matter of the offence and need not be set out *in haec verba*. *Rieger v. United States*, 107 Fed. 916, 920.

SECT. 5210. [List of Shareholders].—“The president and cashier of every national banking association shall cause to be kept at all times a full and correct list of the names and residences of all the shareholders in the association, and the number of shares held by each, in the office where its business is transacted. Such list shall be subject to the inspection of all the shareholders and creditors of the association, and the officers authorized to assess taxes under State authority, during business hours of each day in which business may be legally transacted. A copy of such list, on the first Monday of July of each year, veri-

fied by the oath of such president, or cashier, shall be transmitted to the Comptroller of the Currency."

See *Thayer v. Butler*, 141 U. S. 234, 237; *Finn v. Brown*, 142 Id. 56, 69; *First Nat. Bank v. Richmond*, 89 Fed. 309, 313; *Virginia Nat. Bank v. Richmond*, 42 Id. 877, 879; *Davis v. Stevens*, 17 Blatch. 259; *Moore v. Jones*, 3 Woods, 53; *Meyers v. Valley Nat. Bank*, 18 N. B. Reg. 34; *First Nat. Bank v. Peterborough*, 56 N. H. 38; *Hershire v. First Nat. Bank*, 35 Iowa, 272; *Abbott v. Bangor*, 54 Maine, 540; *Rich v. State Bank*, 7 Neb. 201. One, if not the principal, object of this requirement was to give creditors of the association, as well as State authorities, information as to the shareholders upon whom, if the association becomes insolvent, will rest the individual liability for its contracts, debts, and engagements. *Pauly v. State Loan & Trust Co.*, 165 U. S. 606, 608, 621. State courts may by mandamus compel the officers of a national bank to disclose to a county assessor the names and residences of its stockholders and the shares owned by each. *Paul v. McGrew*, 3 Wash. 296. Taxation by a State against stockholders upon shares in national banks within its limits is valid. *Van Slyke v. Wisconsin*, 154 U. S. 581; *First Nat. Bank v. Herbert*, 44 Fed. 158; see *Brown v. French*, 80 Id. 166; note to § 5219, below.

The provision requiring each bank to post up a list of its stockholders in its business was merely designed to furnish to the public dealing with the bank a knowledge of the names of its corporators, and to what extent they might be relied on as giving safety to those dealing with it. There is no connection between the purpose of this clause and the subject of taxation. *Waite v. Dowley*, 94 U. S. 527.

When a person's name appears upon the bank's books as a stockholder, he may be estopped from setting up that he is not the owner; but the burden is upon the receiver to show neglect in disclosing the real ownership. *Tourtelot*

v. Stolteben, 101 Fed. 362; *Scott v. Deweese*, 181 U. S. 202, 210; *Lantry v. Wallace*, 182 Id. 536, 554.

SECT. 5211. [Reports of Condition]. — "Every association shall make to the Comptroller of the Currency not less than five reports during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or cashier of such association, and attested by the signature of at least three of the directors. Each such report shall exhibit, in detail and under appropriate heads, the resources and liabilities of the associations at the close of business on any past day by him specified, and shall be transmitted to the Comptroller within five days after the receipt of a request or requisition therefor from him, and in the same form in which it is made to the Comptroller shall be published in a newspaper published in the place where such association is established, or if there is no newspaper in the place, then in one published nearest thereto in the same county, at the expense of the association; and such proof of publication shall be furnished as may be required by the Comptroller. The Comptroller shall also have power to call for special reports from any particular association whenever in his judgment the same are necessary in order to a full and complete knowledge of its condition."

See the note to § 5212, *infra*; *Ex parte Bain*, 121 U. S. 1; *United States v. Hall*, 131 Id. 50, 53; *Keyser v. Hitz*, 133 Id. 138, 145; *Briggs v. Spaulding*, 141 U. S. 132, 144; *United States v. Potter*, 56 Fed. 83, 97; 155 U. S. 438; *United States v. Bartow*, 10 Fed. 873; *Van Antwerp v. Hulburd*, 8 Blatch. 282; *Graves v. Lebanon Nat. Bank*, 10 Bush, 23.

See also § 6 of the Act of 1876, cited in note to § 5220,

supra. Amended by 19 St. 252, ch. 69, by changing "associations" in the seventh line to "association." The Act of Feb. 26, 1881 (21 St. 352), ch. 82, provides —

"That the oath or affirmation required by Rev. Stats. § 5211, verifying the returns made by national banks to the Comptroller of the Currency, when taken before a notary public properly authorized and commissioned by the State in which such notary resides and the bank is located, or any other officer having an official seal, authorized in such State to administer oaths, shall be a sufficient verification as contemplated by said § 5211. *Provided*, That the officer administering the oath is not an officer of the bank."

"Attest" here means "certify." *Gerner v. Mosher*, 58 Neb. 135. The officers' written report is not competent evidence of the value of the bank's property or stock. *Patterson v. Plummer*, 10 No. Dak. 95. A bank employee's surety is not released because of incorrect reports made as to the bank's condition. *Lieberman v. First Nat. Bank*, 2 Penn. (Del.) 416.

Prior to the passage of the Act of 1881, a notary public was not authorized to administer to a bank officer an oath verifying the report made by him under this section. *United States v. Curtis*, 107 U. S. 671.

SECT. 5212. [Reports of Dividends and Earnings]. — "In addition to the reports required by the preceding section, each association shall report to the Comptroller of the Currency, within ten days after declaring any dividend, the amount of such dividend and the amount of net earnings in excess of such dividend. Such reports shall be attested by the oath of the president or cashier of the association."

Trust companies organized in the District of Columbia under the Act of Oct. 1, 1890, ch. 1246 (26 St. 625), are by § 6 of that Act to report to the Comptroller of the Currency, who is to have the visitorial powers specified in § 5240, and may, when necessary, take possession, as provided by § 5234.

SECT. 5213. [Penalty for Failure to Report]. — “Every association which fails to make and transmit any report required under either of the two preceding sections shall be subject to a penalty of one hundred dollars for each day after the periods, respectively, therein mentioned, that it delays to make and transmit its report. Whenever any association delays or refuses to pay the penalty herein imposed, after it has been assessed by the Comptroller of the Currency, the amount thereof may be retained by the Treasurer of the United States, upon the order of the Comptroller of the Currency, out of the interest, as it may become due to the association, on the bonds deposited with him to secure circulation. All sums of money collected for penalties under this section shall be paid into the Treasury of the United States.”

See §§ 3, 6, of St. 1876, cited in note to § 5220, *infra*; see also the note to § 5212, *supra*; *Hanover Nat. Bank v. First Nat. Bank*, 109 Fed. 421.

SECT. 5214. [Tax on Circulation]. — “In lieu of all existing taxes, every association shall pay to the Treasurer of the United States, in the months of January and July, a duty of one-half of one per centum each half year upon the average amount of its notes in circulation.”

16 A. G. Op. 173, 187; 17 Id. 540; *Johnston v. United States*, 17 Ct. Cl. 157. The obligations and penalties

imposed upon national banks by this section and §§ 5215, 5216, and 5217, relate to solvent banks, and not to banks which have passed into the hands of the Comptroller of the Currency. *Jackson v. United States*, 20 Ct. Cl. 298.

"Notes in circulation" do not include bank notes, whether signed or unsigned, which are retained and not issued by the bank. 20 A. G. Op. 695, 704.

See § 13 of the Act of 1900, ch. 41, stated *supra* with § 5133. The tax here imposed upon the average amount of the notes of a national bank in circulation is not a revenue bill within the declaration of the Constitution that "all bills for raising revenue shall originate in the House of Representatives." *Twin City Bank v. Nebeker*, 167 U. S. 196.

Secs. 19, 20, and 21 of the Act of February 8, 1875, provide —

"SEC. 19. That every person, firm, association, other than national bank associations, and every corporation, State bank, or State banking association shall pay a tax of ten per centum on the amount of their own notes used for circulation and paid out by them.

"SEC. 20. That every such person, firm, association, corporation, State bank, or State banking association, and also every national banking association, shall pay a like tax of ten per centum on the amount of notes of any person, firm, association, other than a national banking association, or of any corporation, State bank, or State banking association, or of any town, city, or municipal corporation, used for circulation and paid out by them.

"SEC. 21. That the amount of such circulating notes, and of the tax due thereon, shall be returned, and the tax paid at the same time, and in the same manner, and with like penalties for failure to return and pay the same, as

provided by law for the return and payment of taxes on deposits, capital, and circulation imposed by the existing provisions of internal revenue law."

Secs. 3414-3417 of the Revised Statutes provide—

"SEC. 3414. A true and complete return of the monthly amount of circulation, as aforesaid, and of the monthly amount of notes of persons, town, city, or municipal corporation, State banks, or State banking associations paid out as aforesaid for the previous six months, shall be made and rendered in duplicate on the first day of December and the first day of June by each of such banks, associations, corporations, companies, or persons, with a declaration annexed thereto, under the oath of such person, or of the president or cashier of such bank, association, corporation, or company, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful statement of the amounts subject to tax, as aforesaid; and one copy shall be transmitted to the collector of the district in which any such bank, association, corporation, or company is situated, or in which such person has his place of business, and one copy to the Commissioner of Internal Revenue.

"SEC. 3415. In default of the returns provided in the preceding section the amount of circulation, and notes of persons, town, city, and municipal corporations, State banks, and State banking associations paid out, as aforesaid, shall be estimated by the Commissioner of Internal Revenue, upon the best information he can obtain. And for any refusal or neglect to make return and payment any such bank, association, corporation, company, or person so in default shall pay a penalty of two hundred

dollars, besides the additional penalty and forfeitures provided in other cases.

"SEC. 3416. Whenever any State bank or banking association has been converted into a national banking association, and such national banking association has assumed the liabilities of such State bank or banking association, including the redemption of its bills, by any agreement or understanding whatever with the representatives of such State bank or banking association, such national banking association shall be held to make the required return and payment on the circulation outstanding, so long as such circulation shall exceed five per centum of the capital before such conversion of such State bank or banking association.

"SEC. 3417. The provisions of this chapter relating to the tax on the circulation of banks and to their returns, except as contained in sections thirty-four hundred and eleven, thirty-four hundred and twelve, thirty-four hundred and thirteen, and thirty-four hundred and sixteen, and such parts of sections thirty-four hundred and fourteen and thirty-four hundred and fifteen as relate to the tax of ten per centum on certain notes, shall not apply to associations which are taxed under and by virtue of Title 'NATIONAL BANKS.'"

SECT. 5215. [*Semiannual Return of Circulation*]. — "In order to enable the Treasurer to assess the duties imposed by the preceding sections, each association shall, within ten days from the first days of January and July of each year, make a return, under the oath of its president or cashier, to the Treasurer of the United States, in such form as the Treasurer may prescribe, of the average amount of its notes in circulation for the six months next preced-

ing the most recent first day of January or July. Every association which fails so to make such return shall be liable to a penalty of two hundred dollars, to be collected either out of the interest as it may become due such association on the bonds deposited with the Treasurer, or, at his option, in the manner in which penalties are to be collected of other corporations under the laws of the United States."

The five per centum redemption fund deposited by a national bank with the United States Treasurer is a fund for the sole purpose of redeeming circulating notes, and, upon the bank's insolvency, cannot be used by the treasurer to pay the tax due the United States under this section. *Jackson v. United States*, 20 Ct. Cl. 298. See 16 A. G. Op. 173.

SECT. 5216. [**Proceedings on Default**]. — "Whenever any association fails to make the half yearly return required by the preceding section, the duties to be paid by such association shall be assessed upon the amount of notes delivered to such association by the Comptroller of the Currency."

SECT. 5217. [**Enforcing Tax on Circulation**]. — "Whenever an association fails to pay the duties imposed by the three preceding sections, the sums due may be collected in the manner provided for the collection of United States taxes from other corporations; or the Treasurer may reserve the amount out of the interest, as it may become due, on the bonds deposited with him by such defaulting association."

See the note to § 5214, *supra*.

SECT. 5218. [**Refunding Excess Tax**].—"In all cases where an association has paid or may pay in excess of what may be or has been found due from it, on account of the duty required to be paid to the Treasurer of the United States, the association may state an account therefor, which, on being certified by the Treasurer of the United States, and found correct by the Comptroller of the Treasury, shall be refunded in the ordinary manner by warrant on the Treasury."

See the note to § 5214, *supra*. SECT. 3411 provides—

"Whenever the outstanding circulation of any bank, association, corporation, company, or person is reduced to an amount not exceeding five per centum of the chartered or declared capital existing at the time the same was issued, said circulation shall be free from taxation; and whenever any bank which has ceased to issue notes for circulation deposits in the Treasury of the United States, in lawful money, the amount of its outstanding circulation, to be redeemed at par, under such regulations as the Secretary of the Treasury shall prescribe, it shall be exempt from any tax upon such circulation."

SECT. 5219. [**State Taxation of National Banks**].—"Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than

is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed."

See *Union Bank of Cincinnati v. Miller*, 15 Fed. 703; *Exchange Bank Cases*, 21 Id. 99; *Mercantile Bank of New York v. New York*, 28 Id. 776; *Maguire v. Board of Comm'rs*, 71 Ala. 401; *McMahon v. Palmer*, 102 N. Y. 176; *Redhead v. Iowa Nat. Bank* (Iowa), 98 N. W. 806; *Commonwealth v. Citizens' Nat. Bank* (Ky.), 80 S. W. 158. Sect. 41 of the cited St. 1864, having given rise to conflicting decisions in the courts, Congress passed the explanatory act of 15 St. 34, ch. 7 (1868), declaring that the words "place where the bank is located, and not elsewhere," in said § 41, shall be construed and held to mean the State within which the bank is located; and this section was framed to embody the substance of both provisions. 2 Commissioners' Draft of U. S. Rev. Stats. 2490.

See note to § 5171. Taxation by a State of stockholders in national banks within its limits is valid. *Van Slyke v. Wisconsin*, 154 U. S. 581; *First Nat. Bank v. Herbert*, 44 Fed. 158; *McHenry v. Downer*, 116 Cal. 20; *Cons. Nat. Bank v. Pima County* (Ariz.), 48 Pac. Rep. 291; note above to § 5210. The Territories as well as the States may tax national bank shares. *Talbott v. Silver Bow County*, 139 U. S. 458. The tax is upon the shares, not on the assets, of the bank, and the entire stock of a national bank cannot be taxed *in solido*. *Va. Nat. Bank v. Richmond*, 42 Fed. 877; *Nat. Bank of Commerce v. New Bedford*, 155 Mass. 313; see *First Nat. Bank v. Chehalis County*, 6 Wash. 64;

166 U. S. 440; *Bank of Commerce v. Seattle*, 166 U. S. 463.

Cases arising under this section are Federal questions within the removal acts, and they may be removed to the Federal court although the provisions of the United States statute have been re-enacted by the State legislature. *Richards v. Rock Rapids*, 72 Iowa, 77; 33 N. W. Rep. 372; *Sioux Falls Nat. Bank v. Swenson*, 48 Fed. 621; *Third Nat. Bank v. Mylin*, 76 Id. 385. An action to enforce a right conferred by this section is a suit arising under the laws of the United States within the meaning of the Act of March 3, 1875. *Stanley v. Board of Supervisors*, 6 Fed. 561; 105 U. S. 305. This section applies as well to Territories as to States, as may be seen by reference to Rev. Stats. §§ 5134, 5157, 5181, 5197, 5239, 5242. *Commissioners of Silver Bow County v. Davis*, 6 Montana, 306.

In addition to the restrictions now imposed upon State taxation of national bank shares, the act of 1864 declared "that the tax so imposed, under the laws of any State, upon the shares of any of the associations authorized by this act, shall not exceed the rate imposed upon the shares in any of the banks organized under the authority of the State where such association is located." While this statute was in force, a State law which did not levy any tax upon shares in State banks, the tax being assessed upon the capital of the banks after deducting that portion which was invested in United States securities, but which imposed a tax on the shares of national banks, was held not to be warranted by the act of Congress. *Van Allen v. The Assessors*, 3 Wall. 573, reversing 33 N. Y. 161.

Under the limitations of this section, shares in national banks are liable to taxation by the State without regard to the fact that the capital of such banks is invested in bonds of the United States, declared by the acts creating them to be exempted from taxation by or under State authority. So construed, the act is constitutional. *People v. The Com-*

missioners, 4 Wall. 244; affirming *Van Allen v. Assessors*, 3 Wall. 573; *First Bank of Chicago v. Farwell*, 7 Fed. 518; *Nat. State Bank v. Mayor (Iowa)*, 94 N. W. 234. See also *National Bank v. Commonwealth*, 9 Wall. 353; *Morseman v. Younkin*, 27 Iowa, 350. Stock of the United States, constituting a part or the whole of the capital stock of a bank, is not subject to State taxation. *Bank of Commerce v. New York City*, 2 Black, 620.

The restriction in the Act of 1864 (not now in force) had reference to banks of issue, and Congress meant no more than to require of each State, as a condition to the exercise of the power to tax the shares in national banks, that it should, as far as it had the capacity, tax in like manner the shares of the banks of issue of its own creation. But when by contract a State has agreed not to tax its banks of issue, only two in number, not to exceed one per centum, while it taxes its other banks two per centum, it may tax the shares of national banks two per centum, it appearing that the capital of the two banks of issue forms but a very inconsiderable portion of the capital of the State banks. *Lionberger v. Rouse*, 9 Wall. 468.

The words, "at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens," refer to the entire process of assessment, which, in the case of national bank shares, includes both their valuation and the rate of percentage upon such valuation. Consequently, the act of Congress is violated if, in connection with a fixed percentage applicable to the valuation alike of national bank shares and of other moneyed investments or capital, the State law establishes or permits a mode of assessment by which such shares are valued higher in proportion to their real value than is other moneyed capital. *Boyer v. Boyer*, 113 U. S. 689, 695. The prohibition cannot be evaded by the assessment of equal rates of taxation upon unequal valuations. Where a State statute authorizes individuals to deduct the amount of debts owing by them from the assessed value of their personal property

and moneyed capital subject to taxation, the share-owners of national banks are entitled to the same deduction. *People v. Weaver*, 75 N. Y. 30; 100 U. S. 539. For applications of this principle, see *Supervisors v. Stanley*, 105 U. S. 305; *Hills v. Exchange Bank*, 5 Fed. 248; 105 U. S. 319; *Evansville Bank v. Britton*, 10 Biss. 503; 8 Fed. 867; 105 U. S. 322; *Cummings v. National Bank*, 101 Id. 153; *City Nat. Bank v. Paducah*, 2 Flippin, 61; *Richards v. Incorporated Town*, 31 Fed. 505.

If State laws exempt from taxation for local purposes railroad securities, stocks in corporations which are subject to taxation for State purposes, mortgages, judgments, recognizances, and moneys due on contracts for the sale of real estate, and it is admitted that large amounts of exempted property come under these various classes, it is a discrimination against national bank shares, and is forbidden by this statute. *Boyer v. Boyer*, 113 U. S. 689, reversing *Boyer's Appeal*, 103 Penn. St. 387. The mere fact that certain kinds of debts are permitted by a State statute to be deducted from the gross amount of debtors' credits in listing their property for taxation, while shareholders in national banks are not allowed to deduct their indebtedness from the value of their shares, does not constitute an illegal discrimination. *First Nat. Bank v. Ayers*, 160 U. S. 660, 665; see *First Nat. Bank v. Richmond*, 39 Fed. 309, 312; *Whitney Nat. Bank v. Parker*, 41 Id. 402; *First Nat. Bank v. Herbert*, 44 Id. 158. A State taxing statute, which is designed to operate equally upon State and national banks, but from which, because of the doctrine of *res judicata*, certain State banks are exempted, is not forbidden as a discrimination against national banks. *First Nat. Bank v. Stone*, 88 Fed. 409; see 22 A. G. Op. 320; *Lander v. Mercantile Bank*, 186 U. S. 458, 472; *Gray v. Logan County*, 7 Okla. 321; *Commercial Nat. Bank v. Chambers*, 21 Utah, 324.

Perfect equality of taxation between State and national banks is not required. This statute does not interfere with

State modes of taxation. All that is necessary to satisfy it is that the system of State taxation of its own citizens, of its own banks, and of its own corporations, shall not work a discrimination unfavorable to the holders of the shares of national banks. Within these limits, the manner of assessing and collecting all taxes by the States is uncontrolled by the act of Congress. *Davenport Bank v. Davenport*, 64 Iowa, 140; 123 U. S. 83; *People v. Commissioners*, 35 N. Y. 423; 4 Wall. 244. The true construction of the restriction that the taxation "shall not be at a greater rate than is assessed upon other moneyed capital," &c., is that it prohibits an assessment based upon a valuation which discriminates unfairly against bank shares, and is not merely intended to secure equality in the rate of the tax after the assessment has been made. *Albany City Bank v. Maher*, 6 Fed. 417. If neither the necessary, usual, or probable effect of a State system of assessment discriminates in favor of State banks or moneyed capital in the hands of citizens against national banks upon the face of the statute, nor any evidence is given of the intention of the legislature to make such a discrimination, nor any proof that it works an actual and material discrimination, the State statute will not be held invalid. *Davenport Bank v. Davenport*, 123 U. S. 83. See *Richards v. Incorporated Town*, 31 Fed. 505. When State laws impose different rates of taxation for different classes of moneyed capital, the rate imposed upon shares in national banks should approximate as closely as may be to the rate imposed upon other moneyed capital of the same or similar class, viz., shares of State banks. There is an unjust discrimination against national bank shares where the rate per share on a State bank whose capital was in excess of the capital of all the national banks in the city in which it was located was fifty cents, and the rate imposed upon the latter was \$1.05 per share, which was theoretically laid upon all banks, but from the payment of which State banks were relieved. *City Nat. Bank v. Paducah*, 2 Flippin, 61.

In *Aberdeen Bank v. Chehalis County*, 166 U. S. 440, 460, Mr. Justice Shiras said : The conclusions to be deduced from our previous decisions "are that money invested in corporations or in individual enterprises that carry on the business of railroads, of manufacturing enterprises, mining investments, and investments in mortgages, does not come into competition with the business of national banks, and is not therefore within the meaning of the act of Congress ; that such stocks as those in insurance companies may be legitimately taxed on income instead of on value, because such companies are not competitors for business with the national banks ; and that exemptions, however large, of deposits in savings banks, or of moneys belonging to charitable institutions, if exempted for reasons of public policy and not as an unfriendly discrimination against investments in national bank shares, should not be regarded as forbidden by § 5219."

This statute only forbids discrimination between national banks and State banks, or moneyed capital in the hands of private individuals. *Merchants' Bank v. Pennsylvania*, 167 U. S. 461, 465. There is no discrimination when a State statute makes a national bank the agent to collect the tax levied upon it and does not compel a State bank to do the same. *Ibid.* With the exception of the bank's real estate, nothing but the shares in the hands of the shareholders can be taxed. *Owensboro Nat. Bank v. Owensboro*, 173 U. S. 664, 676, holding that a tax law of Kentucky, which imposed a tax on the franchise or intangible property of a national bank, was beyond the authority of a State and void. See also *Third Nat. Bank v. Stone*, 174 U. S. 432 ; *First Nat. Bank v. Province*, 20 Mont. 374, 419 ; *People v. National Bank of D. O. Mills & Co.*, 123 Cal. 53 ; 69 Am. State Rep. 32 and *note* ; *First Nat. Bank v. San Francisco*, 129 Cal. 96.

This statute forbids assessing officers from valuing some property at a certain percentage of its true value in money and applying another percentage to other property, and a

larger percentage to the shares of national banks, as the adoption of a six-tenths rule as to one taxpayer and a seven-tenths rule as to another. It is not material that national bank shares are assessed on that basis at less than their true value in money, that being the rule prescribed by State law. It also forbids an equalizing board from equalizing such shares with the moneyed capital invested in incorporated State banks. The equalization must be with the whole moneyed capital subject to taxation. *First Nat. Bank v. Treasurer*, 25 Fed. 749. If assessing officers adopt and follow a rule to assess real estate at one-third its value, ordinary personal property the same, and moneyed capital at three-fifths its value, and the State board of equalization increases the valuation of bank shares to their full value, the tax levied upon the latter is unjust. *Cummings v. National Bank*, 101 U. S. 153.

If a State statute directs that all moneyed capital, including national bank shares, shall be assessed at its cash value, and assessing officers systematically and intentionally assess all moneyed capital far below such value, and bank shares at their full value, this statute is violated. *Pelton v. National Bank*, 101 U. S. 143; 21 Alb. L. J. 232. Error or inequality which arises from a mistake in judgment on the part of the assessing officers, the differences in the valuations made by them as compared with the estimates placed on the property by witnesses not being greater than frequently arises between witnesses in cases for the trial of questions of value, does not vitiate an assessment. *Exchange Nat. Bank v. Miller*, 19 Fed. 372; *National Bank v. Kimball*, 103 U. S. 732.

The proper officer, in accordance with the rules and practice adopted for the valuation of other moneyed capital of individuals, fixed the taxable value of national bank shares at sixty per centum of their true value in money, and certified and transmitted the same to the annual State board of equalization for incorporated banks. This board had no power to make any equalization except

as to bank shares among themselves, its only purpose being to make the capital stock of all incorporated banks in the State equal in valuation for the purposes of taxation so far as relates to their actual cash value. It made an order increasing the valuation to sixty-five per centum, and certified that value to the officer, and it became the basis of taxation, and it was held that there was a discrimination within the meaning of this statute. *Whitbeck v. Mercantile Nat. Bank*, 127 U. S. 193. In the taxation of stock of national banks the owners thereof, having no other credits or moneyed capital, are entitled to deduct their *bona fide* debts from the assessed value of such shares of stock. *Wasson v. First Nat. Bank*, 107 Ind. 206; 34 Albany Law Jour. 311; *Peavey v. Greenfield*, 64 N. H. 284; *Farmington v. Downing*, 67 Id. 441; *Bressler v. Wayne County*, 25 Neb. 468; 32 Id. 818, 834.

The owner of national bank shares does not lose his right to the same deductions on account of indebtedness as is accorded to the owners of other property, though he failed to demand that it be made before the tax-roll was delivered for the collection of the taxes, *Whitbeck v. Mercantile Nat. Bank*, 127 U. S. 193; nor because national bank stock was not included in the list of "solvent credits" enumerated in the State statute. *McAden v. Commissioners of Mecklenburg County*, 97 N. C. 355. See *People v. Ryan*, 88 N. Y. 142.

Trust companies organized under the laws of New York are not banks in the commercial sense of the word, although they issue shares of stock which are moneyed capital in the hands of individuals. They are taxable for local purposes upon the actual value of their stock, and are subject to a franchise tax, in the nature of an income tax, payable to the State for State purposes. But this does not show that investments in them are subject to less taxation than is imposed upon shares of bank stock. *Mercantile Bank v. New York*, 121 U. S. 138. Savings banks are not within the meaning of this statute so as to require that, if

they are exempted from taxation, shares in national banks must also be exempted therefrom. The only limitation to be added to the rule announced in *Hepburn v. School Directors* (23 Wall. 480), where it was said that this section was not intended to curtail the State power on the subject of taxation, and that it simply requires that capital invested in national banks shall not be taxed at a greater rate than like property similarly invested, and that it was not intended to cut off the power to exempt particular kinds of property, is that the exemptions should be founded upon just reason, and not operate as an unfriendly discrimination against investments in national bank shares. However large, therefore, may be the amount of moneyed capital in the hands of individuals, in the shape of deposits in savings banks as now organized, which the policy of the State exempts from taxation for its own purposes, that exemption cannot affect the rule for the taxation of shares in national banks, provided they are taxed at a rate not greater than other moneyed capital in the hands of individual citizens otherwise subject to taxation. *Mercantile Bank v. New York*, 121 U. S. 138, 161; *Bank of Redemption v. Boston*, 125 Id. 60. State bonds, or municipal bonds issued by State authority, are not within the reason of the rule established for the taxation of national bank shares. *Mercantile Bank v. New York*, 121 U. S. 138, 162. The exemption from State taxation of interest-paying bonds issued by a municipal corporation, they being in the hands of individuals, does not invalidate an assessment upon the shares of national banks. This statute has not cut off the discretionary power of the States over the subject of exempting particular classes of property from taxation (*Adams v. Nashville*, 95 U. S. 19), and in Indiana, shares in national banks may be taxed, although by a statute passed prior to the Banking Act, State banks are exempt from taxation. *Richmond v. Scott*, 48 Ind. 586. It does not include exemptions from taxation, however large, such as deposits in savings banks or of moneys be-

longing to charitable institutions, which are exempt by public policy. *First Nat. Bank v. Chapman*, 173 U. S. 205, 214; *Commercial Bank v. Chambers*, 182 Id. 556, 560; *National Bank v. Baltimore*, 100 Fed. 24; *Mercantile Nat. Bank v. Hubbard*, 98 Id. 465, 470; *National Bank v. Baltimore*, 92 Id. 239.

When an exemption or deduction from taxation is allowed by the laws of a State, and is of such general operation as to affect all classes of taxable property, it must be allowed in assessing shares in national banks, because it is the rule of assessment. *National Albany Ex. Bank v. Wells*, 18 Blatch. 478. But moneyed capital cannot be said to be exempt from taxation by State laws because that portion of it which is invested in the shares of various classes of corporations is exempt, if such capital is taxed in the hands of corporations. Shareholders in national banks may be taxed under State laws at a higher rate than is imposed upon stockholders in other than moneyed corporations, without violation of this statute. *First Nat. Bank v. Waters*, 19 Blatch. 242. National Bank shares may be assessed at more than their par value. *Hepburn v. School Directors*, 23 Wall. 480; *People v. Commissioners*, 94 U. S. 415. In assessing national bank stock in New York the assessors must determine the actual value of the shares, taking into consideration all the capital of the bank, whether surplus or in real estate or otherwise, and then deduct from such value such sum as represents the proportion which the assessed value of the real estate bears to the assessed value of the entire capital. *Tradesmen Nat. Bank v. Commissioners*, 69 N. Y. 91; *Gallatin Bank v. Commissioners*, 67 Id. 516.

State taxation of national bank shares is permitted, subject to the restriction containing these words, and the State may provide the manner of such taxation. *Scobee v. Bean*, 109 Ky. 526. The main purpose of Congress in thus fixing limits to State taxation on investments in shares of national banks, "was to render it impossible for the State, in

levying such a tax, to create and foster an unequal and unfriendly competition by favoring institutions or individuals carrying on a similar business and operations and investments of a like character." *Jenkins v. Neff*, 186 U. S. 230, 163 N. Y. 320; see *National Bank v. Baltimore*, 92 Fed. 239; *Nevada Nat. Bank v. Dodge*, 119 Id. 57; *Mechanics' Nat. Bank v. Baker*, 65 N. J. L. 113, 549; *Cleveland Trust Co. v. Lander*, 62 Ohio St. 266; *Illinois Nat. Bank v. Kinsella*, 201 Ill. 31; *First Nat. Bank v. Turner*, 154 Ind. 456; *Washington Nat. Bank v. King County*, 9 Wash. 607; *Newport v. Mudgett*, 18 Id. 271; *Pacific Nat. Bank v. Pierce County*, 20 Id. 675; *Burrows v. Smith*, 95 Va. 694; *Commercial Nat. Bank v. Chambers*, 21 Utah, 324; *Primm v. Fort*, 23 Tex. Civ. App. 605.

"Other moneyed capital." Money at interest is not the only moneyed capital included in this term. Stock in banks is such capital, and it seems that other investments in stocks and securities might be included in it. *Hepburn v. School Directors*, 23 Wall. 480, 484. It seems that the words "moneyed capital in the hands of individual citizens" more aptly describes ready money or capital invested in private banking than it does capital invested in manufacturing corporations, insurance companies, and the like. As originally used in the Act of 1864, the phrase signified something different from capital invested in State banking corporations, because it was provided that State taxation should not exceed that imposed on moneyed capital in the hands of individual citizens, or that imposed "upon the shares in any of the banks organized under the authority of the State." If it had been intended to include shares in such corporations as are referred to, it seems that some more comprehensive expression would have been employed. The idea of Congress seems to have been to place national bank shares on an equality with State bank shares, and the capital employed in State banks. *First Nat. Bank v. Waters*, 19 Blatch. 242, 247. The exemption of shares of various corporations from taxation by a

State statute does not exempt "moneyed capital in the hands of individual citizens" within the meaning of this section. *First Bank of Utica v. Waters*, 7 Fed. 152.

The terms of this section include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount, or otherwise, which are from time to time, according to the rules of business, reduced again to money and reinvested. It includes money in the hands of individuals employed in a similar way, invested in loans, or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and reinvestment. In this way the moneyed capital in the hands of individuals is distinguished from what is known as personal property. All capital the value of which is measured in terms of money is not included. Neither does the statute necessarily include all forms of investment in which the interest of the owner is expressed in money. Shares of stock in railroad, mining, and manufacturing companies and other corporations are not necessarily moneyed capital, and their business may not consist in any kind of dealing in money or commercial representatives thereof. *Mercantile Bank v. New York*, 121 U. S. 138; *McMahon v. Palmer*, 102 N. Y. 176.

"Moneyed capital" embraces capital employed for profit by national banks or by individuals, but not moneyed capital in the hands of a corporation, even if its business is such as to make its shares moneyed capital when in the hands of individuals, or if it invests its capital in securities payable in money. *Palmer v. McMahon*, 133 U. S. 660, 667; *Talbott v. Silver Bow County*, 139 U. S. 438; see *First Nat. Bank v. Lindsay*, 45 Fed. 619; *Puget Sound Nat. Bank v. King County*, 57 Id. 433; *Mercantile Nat. Bank v. Shields*, 59 Id. 952; *Wayne County v. Bressler*,

32 Neb. 818, 834; 25 Id. 468; Dutton v. Citizens' Nat. Bank, 53 Kansas, 440, 451, 462; Puget Sound Nat. Bank v. Seattle, 9 Wash. 608.

"Other moneyed capital" means taxable capital. Hence the stockholders of a national bank are not entitled to a deduction from the value of their shares because the capital of the bank is invested in non-taxable government bonds, although such deduction is made under State laws in favor of citizens and corporations. People v. Commissioners, 4 Wall. 244, 256. The property to be taxed is property which, according to the law of the State, is the subject of taxation within its jurisdiction. Mercantile Bank v. New York, *supra*; Exchange Nat. Bank v. Miller, 19 Fed. 372. The undivided profits of a national bank, beyond the amount required by law to be kept as a surplus fund, are taxable, though invested in government bonds. First Nat. Bank v. Concord, 59 N. H. 75. See Maguire v. Board of Revenue, 71 Ala. 401.

Taxation must be upon the shares. — This section limits the States to taxation upon the shares in national banks, as distinguished from taxation of the banks *eo nomine* upon their property or capital. Hence a State cannot evade its restrictions by requiring the value of the property of the bank to be added to the value of the shares otherwise ascertained. St. Louis Nat. Bank v. Papin, 4 Dillon, 29; Sumter County v. Bank of Gainesville, 62 Ala. 464. Where a State statute provides for taxing the capital of a bank, a tax cannot be levied on the shares of the stockholders as provided for in this section; for a tax on the capital is not the same thing as a tax on the shares of which the capital is composed. Bradley v. The People, 4 Wall. 459. Non-resident stockholders are personally liable for the tax. New York v. McLean, 170 N. Y. 374; see Farmington v. Downing, 67 N. H. 441; Arizona Nat. Bank v. Long (Ariz.), 57 Pac. 639.

"Taxed in the city or town where the bank is located." See 62 Am. State Rep. 69, *note*. — This clause is a law of

the property. Every owner takes the shares subject to this power of taxation under State authority, and every non-resident, by becoming an owner, voluntarily submits himself to the jurisdiction of the State in which the bank is established for all the purposes of taxation on account of his ownership. His money invested in the shares is withdrawn from taxation under the authority of the State in which he resides, and submitted to the taxing power of the State where, in contemplation of law, his investment is located. The State, therefore, within which a national bank is located has jurisdiction for the purposes of taxation of all the shareholders of the bank, both resident and non-resident, and of all its shares. *Tappan v. Merchants' Nat. Bank*, 19 Wall. 490. The manifest intention of this clause is to permit the State in which a national bank is located to tax, subject to the limitations of the section, all the shares of its capital stock without regard to their ownership. And national banks owning the shares of the capital stock of another national bank, by reason of that ownership are on the same footing with all other owners. *Bank of Redemption v. Boston*, 125 U. S. 60. Resident stockholders in New Jersey are to be assessed for their shares in the township or ward where they reside (*State v. Newark*, 11 Vroom, 558); in North Carolina, at their residence or at the location of the bank, as the legislature directs (*Buie v. Commissioners of Fayetteville*, 79 N. C. 267); in Massachusetts, in the same city or town, within the same State, where the owner resides. *Austin v. Boston*, 14 Allen, 359. See *McMahon v. Palmer*, 102 N. Y. 176; *Abbott v. Bangor*, 54 Maine, 840; *Packard v. Lewis-ton*, 55 Id. 456; *Austin v. The Aldermen*, 7 Wall. 694.

Taxation of real property.—*First Nat. Bank v. Albia*, 85 Iowa, 736; 52 N. W. Rep. 334; *Commissioners of Morgan County v. First Nat. Bank*, 25 Ind. App. 94. If State banks are allowed to deduct from the value of their stock the value of the real estate they own, national banks are entitled to the same privilege. *City Nat. Bank v. Paducah*,

2 Flippin, 61. See Covington City Nat. Bank v. Covington, 21 Fed. 484. The furniture owned by national banks is not taxable by the States, because this section does not authorize it. Covington City Nat. Bank v. Covington, *supra*; National Bank of Oskaloosa v. Young, 25 Iowa, 311. See Mayor of Macon v. First Nat. Bank, *supra*. In Pennsylvania under the Act of June 10, 1881, the real estate of national banks is subject to taxation apart from their other capital. Second Bank of Titusville v. Caldwell, 13 Fed. 429. Stockholders who reside in a regularly organized fire district in the town in which a bank is located, cannot be subjected to a tax on their national bank shares for fire-district purposes. Rich v. Packard Nat. Bank, 138 Mass. 527. As to Michigan, see Howell v. Cassopolis, 35 Mich. 471; as to Illinois, see National Bank of Mendota v. Smith, 65 Ill. 44.

Information on which to base tax. — A State statute which requires the cashier of each national bank within the State, and the cashiers of all other banks, to transmit to the clerks of the several towns in the State in which any stock or share holder of such banking association shall reside, a true list of the names of such stock or share holders, with the number of shares standing against the name of each on the books of such association, together with the amount of money actually paid in on such share on a given date, is not invalid. Waite v. Dowley, 94 U. S. 527.

Remedy for illegal taxation. — Independently of a State statute declaring that suits may be brought to enjoin the illegal levy of taxes and assessments or the collection of them, when a rule or system of valuation is adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental principle of the Constitution, and when this rule is applied to a large class of individuals or corporations, equity may interfere to restrain this unconstitutional exercise of power. Cummings v. National Bank, 101 U. S.

153. The proper mode of procedure in such case is to pay the amount of the tax equal to that assessed upon other property, and to enjoin the collection of the balance. *Id.*; *National Bank v. Kimball*, 103 U. S. 732; *Williams v. Supervisors*, 122 *Id.* 154. Where the inequality of valuation is the result of a State statute designed to discriminate injuriously against the owners of national bank shares, a court of equity will give appropriate relief. *People v. Weaver*, 100 U. S. 539; *Pelton v. National Bank*, 101 *Id.* 143; *Cummings v. National Bank*, *supra*. In *National Bank v. Mobile*, 62 Ala. 284, the remedy was held to be at law, and not by injunction. Equity will not restrain the collection of taxes because the assessing officers reached a correct result by an erroneous method. *St. Louis Nat. Bank v. Papin*, 4 Dillon, 29; 3 Cent. L. J. 689. If it appears that a bank will be subjected to a multiplicity of suits on account of the illegal taxation of its shares, equity will give relief. *City Nat. Bank v. Paducah*, 2 Flippin, 61; *Cummings v. National Bank*, 101 U. S. 153, 156. The Federal courts have jurisdiction to restrain by injunction the taxation, by State authority, of the capital stock of a national bank invested in United States securities. *Bank of Omaha v. Douglas County*, 3 Dillon, 298. A national bank is not subject to local municipal taxation of its business, and the enforcement of such tax may be enjoined. *Mayor of Macon v. First Nat. Bank*, 59 Ga. 648.

Pleading. — A bill which seeks to enjoin the collection of a tax is insufficient if it fails to show that national bank shares are discriminated against by statute, or are rated higher in proportion to their value than other property, under a rule established by the assessing officers. An allegation that the assessments are unequal and partial is not sufficient to put a court of equity in motion. *National Bank v. Kimball*, 103 U. S. 732. In order to render an assessment on such shares void, it must appear that it was the intent of the State statute to tax the shares of the

capital stock of national banks at a higher rate than other moneyed capital in the hands of individuals, or that the assessors acted under some agreement which tended to produce the same result. *First Bank of Chicago v. Farwell*, 7 Fed. 518. It is not sufficient to merely show that the State laws provide a different mode or manner of taxing moneyed capital invested in savings banks or other corporations from that applied to the taxation of money invested in national banks. Before the assessment of the shares in the latter can be held invalid and void, it must be shown that there is, in fact, a higher burden of taxation imposed upon the money thus invested than is imposed upon other moneyed capital. *Richards v. Incorporated Town of Rock Rapids*, 31 Fed. 505.

Collection of tax. — Provided the tax upon shares is levied according to the rules prescribed by this section, it may be collected from the bank, as Congress has not provided for the method of its collection. *National Bank v. Commonwealth*, 9 Wall. 353. The tax may be enforced by distraint against the property of the bank. *First Nat. Bank v. Douglas County*, 3 Dillon, 330. But not where the warrant directs the collector to levy the tax upon the goods and chattels of the stockholders. *National Bank v. Fancher*, 48 N. Y. 524.

Legislative power to cure defective assessment. — Irregularities in the assessment of national bank shares, such as the failure to make entry of an assessment within the time prescribed by law, and a defective oath annexed to the assessment roll, may be cured by subsequent legislative action, if intervening rights are not impaired. *Williams v. Supervisors*, 122 U. S. 154; 21 Fed. 99. But if an assessment is void because the persons assessed were not afforded the opportunity which the law gave them to examine and correct their assessments, a curative act which gives them a right to a review of the assessments made upon the single ground that they are at a higher proportionate valuation than other property put on the

same roll by the same officers, and does not provide for a challenge of the assessment upon the ground of general over-valuation, nor permit them to make the same deductions as other taxpayers are allowed to make, is void. *Albany City Nat. Bank v. Maher*, 9 Fed. 884.

Retroactive laws. — It may be legally possible to pass a valid retroactive tax law not conflicting with this section. *First Nat. Bank v. Covington*, 103 Fed. 523. See, generally, *Cleveland Trust Co. v. Lander*, 184 U. S. 111, 115; *Covington v. Covington First Nat. Bank*, 185 Id. 270, 276; *First Nat. Bank v. Covington*, 129 Fed. 792; *London v. Hope* (Ky.), 80 S. W. 817; 36 *American Law Review*, 297.

CHAPTER IV.

DISSOLUTION AND RECEIVERSHIP.

SECT. 5220. [Two-thirds Vote Required for Liquidation]. — “Any association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock.”

State legislatures cannot interfere with the provisions of this chapter. *Easton v. Iowa*, 188 U. S. 220, reversing 113 Iowa, 516. See *First Nat. Bank v. Selden*, 120 Fed. 212; *Camp v. First Nat. Bank* (Fla.), 33 So. 241. As to actions by and against receivers and “agents” of national banks, see *supra*, note to § 5151, and the note to *McCartney v. Earle*, 53 C. C. A. 392, 398.

See the note to § 5205, *supra*; §§ 6, 7, of St. 1882, stated in note § 5133, *ante*; *Richmond v. Irons*, 121 U. S. 27, 47; *McDonald v. Thompson*, 184 Id. 71, 75; *Watkins v. Lawrence Nat. Bank*, 51 Kansas, 254, 259.

A national bank in voluntary liquidation under this section is not dissolved as a corporation, but may sue and be sued by name for the purpose of winding up its busi-

ness. *Central Bank v. Conn. Mut. Life Ins. Co.*, 104 U. S. 54. In such case, it is liable to a creditor's bill to reach a fund held by the president. *Merchants' Bank v. Masonic Hall Trustees*, 65 Ga. 603; 63 Id. 549; *Wright v. Merchants' Bank*, 1 Flippin, 568. A national bank cannot be proceeded against under the bankrupt law. If insolvent, it can be wound up only in the manner provided by this title. *Re Manufacturers' Nat. Bank*, 5 Biss. 499.

The Act of June 30, 1876, ch. 156 (19 St. 63) provides —

"That whenever any national banking association shall be dissolved, and its rights, privileges, and franchises declared forfeited, as prescribed in Revised Statutes, § 5239, or whenever any creditor of any national banking association shall have obtained a judgment against it in any court of record, and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the Comptroller shall become satisfied of the insolvency of a national banking association, he may, after due examination of its affairs, in either case, appoint a receiver, who shall proceed to close up such association, and enforce the personal liability of the shareholders, as provided in § 5234 of said statutes.

"SEC. 2. That when any national banking association shall have gone into liquidation under the provisions of § 5220 of said statutes, the individual liability of the shareholders provided for by § 5151 of said statutes may be enforced by any creditor of such association, by bill in equity, in the nature of a creditor's bill, brought by such creditor on behalf of himself and of all other creditors of the association, against the shareholders thereof, in any court of the United States having original jurisdiction in

equity for the district in which such association may have been located or established.

"SEC. 3. That whenever any association shall have been or shall be placed in the hands of a receiver, as provided in § 5234 and other sections of said statutes, and when, as provided in § 5236 thereof, the Comptroller shall have paid to each and every creditor of such association, not including shareholders who are creditors of such association, whose claim or claims as such creditor shall have been proved or allowed as therein prescribed, the full amount of such claims and all expenses of the receivership, and the redemption of the circulating notes of such association shall have been provided for by depositing lawful money of the United States with the Treasurer of the United States, the Comptroller of the Currency shall call a meeting of the shareholders of such association by giving notice thereof for 30 days in a newspaper published in the town, city, or county where the business of such association was carried on, or if no newspaper is there published, in the newspaper published nearest thereto, at which meeting the shareholders shall elect an agent, voting by ballot, in person or by proxy, each share of stock entitling the holder to one vote; and when such agent shall have received votes representing at least a majority of the stock in value and number of shares, and when any of the shareholders of the association shall have executed and filed a bond to the satisfaction of the Comptroller of the Currency, conditioned for the payment and discharge in full of any and every claim that may hereafter be proved and allowed against such association by and before a competent court, and for the faithful performance and discharge of all and singular the duties of such trust, the

Comptroller and the receiver shall thereupon transfer and deliver to such agent all the undivided or uncollected or other assets and property of such association then remaining in the hands or subject to the order or control of said Comptroller and said receiver, or either of them; and for this purpose, said Comptroller and said receiver are hereby severally empowered to execute any deed, assignment, transfer, or other instrument in writing that may be necessary and proper; whereupon the said Comptroller and the said receiver shall, by virtue of this act, be discharged and released from any and all liabilities to such association, and to each and all of the creditors and shareholders thereof; and such agent is hereby authorized to sell, compromise or compound the debts due to such association upon the order of a competent court of record or of the United States circuit court for the district where the business of the association was carried on. Such agent shall hold, control, and dispose of the assets and property of any association which he may receive as hereinbefore provided for the benefit of the shareholders of such association as they, or a majority of them in value or number of shares, may direct, distributing such assets and property among such shareholders in proportion to the shares held by each; and he may, in his own name or in the name of such association, sue and be sued, and do all other lawful acts and things necessary to finally settle and distribute the assets and property in his hands. In selecting an agent as hereinbefore provided, administrators or executors of deceased shareholders may act and sign as the decedent might have done if living, and guardians may so act and sign for their ward or wards.

"Sec. 4. That the last clause of § 5205 of said statutes

is hereby amended by adding to the said section the following proviso: '*And provided*, That if any shareholder or shareholders of such bank shall neglect or refuse, after three months' notice, to pay the assessment, as provided in this section, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such shareholder or shareholders to be sold at public auction (after thirty days' notice shall be given by posting such notice of sale in the office of the bank, and by publishing such notice in a newspaper of the city or town in which the bank is located, or in a newspaper published nearest thereto), to make good the deficiency, and the balance, if any, shall be returned to such delinquent shareholder or shareholders.'

"SEC. 5. That all United States officers charged with the receipt or disbursement of public moneys, and all officers of national banks, shall stamp or write in plain letters the word 'counterfeit,' 'altered,' or 'worthless,' upon all fraudulent notes issued in the form of, and intended to circulate as money, which shall be presented at their places of business; and if such officers shall wrongfully stamp any genuine note of the United States, or of the national banks, they shall, upon presentation, redeem such notes at the face-value thereof.

"SEC. 6. That all savings banks or savings and trust companies organized under authority of any act of Congress shall be, and are hereby, required to make, to the Comptroller of the Currency, and publish, all the reports which national banking associations are required to make and publish under the provisions of §§ 5211, 5212, 5213, and shall be subject to the same penalties for failure to make or publish such reports as are therein provided;

which penalties may be collected by suit before any court of the United States in the district in which said savings banks or savings and trust companies may be located. And all savings or other banks now organized, or which shall hereafter be organized, in the District of Columbia, under any act of Congress, which shall have capital stock paid up in whole or in part, shall be subject to all the provisions of the Revised Statutes, and of all acts of Congress applicable to national banking associations, so far as the same may be applicable to such savings or other banks: *Provided*, That such savings banks now established shall not be required to have a paid-in capital exceeding \$100,000."

It seems that Congress did not by the Act of June 30, 1876, leave the Comptroller authority over the assets of a national bank which has gone into voluntary liquidation under this section after a court of competent jurisdiction has, under a creditor's bill, appointed a receiver and taken possession of the assets and initiated proceedings to enforce the liability of stockholders. Where a creditor's bill is pending under said act to enforce the liability of stockholders, an action brought by the Comptroller against one of the stockholders will be abated. *Harvey v. Lord*, 10 Fed. 236. The personal property of an insolvent national bank in the control of a receiver is exempt from State taxation. *Rosenblatt v. Johnston*, 104 U. S. 462.

Under the last part of § 6 of the Act of 1876, a savings bank in the District of Columbia, having a capital of less than \$100,000, may be converted into a national bank; and the certificate of the Comptroller of the Currency is conclusive as to the regularity of the proceedings by which such conversion is made. *Keyser v. Hitz*, 2 Mackey (D. C.), 473. Section 2 of the Act of 1876 creates no new liability, since the liability existing was enforceable in equity before as well

as after that act. *Irons v. Manufacturers' Bank*, 17 Fed. 308; *Harvey v. Lord*, 10 Id. 236; *Richmond v. Irons*, 121 U. S. 49. A bill filed under that section stops the running of the statute of limitations upon all claims against the bank. *Irons v. Manufacturers' Bank*, 27 Fed. 591.

The right to liquidate under this provision is independent of the appointment of a receiver by the Comptroller of the Currency under the Act of June 30, 1876. *Washington Nat. Bank v. Eckels*, 57 Fed. 870. A receiver so appointed is an officer of the United States, and so is an agent appointed to act in his place. *Gibson v. Peters*, 150 U. S. 342; *In re Chetwood*, 165 Id. 443; *McConville v. Gilmour*, 36 Fed. 277; *Chetwood v. California Nat. Bank*, 113 Cal. 414, 649. A bill in equity for a receiver, if brought by a shareholder, is really on behalf of the bank, and he can obtain only such remedies as the bank is entitled to. *Chetwood v. California Nat. Bank*, 113 Cal. 414, 649, 654.

SECT. 5221. [Notice of Voluntary Liquidation].—“Whenever a vote is taken to go into liquidation it shall be the duty of the board of directors to cause notice of this fact to be certified, under the seal of the association, by its president or cashier, to the Comptroller of the Currency, and the publication thereof to be made for a period of two months in a newspaper published in the city of New York, and also in a newspaper published in the city or town in which the association is located, or if no newspaper is there published, then in the newspaper published nearest thereto, that the association is closing up its affairs, and notifying the holders of its notes and other creditors to present the notes and other claims against the association for payment.”

SECT. 5222. [Deposit of Lawful Money].—“Within six months from the date of the vote to go into liquidation

the association shall deposit with the Treasurer of the United States lawful money of the United States sufficient to redeem all its outstanding circulation. The Treasurer shall execute duplicate receipts for money thus deposited, and deliver one to the association and the other to the Comptroller of the Currency, stating the amount received by him, and the purpose for which it has been received; and the money shall be paid into the Treasury of the United States, and placed to the credit of such association upon redemption account."

See notes to §§ 5214 and 5182. See 13 A. G. Op. 56; § 6 of St. 1882, stated in note to § 5133, *ante*; and § 4 of the Act of 1874, stated in note to § 5191, *supra*.

Sec. 6 of the Act of July 14, 1890, ch. 708, provided—

"That upon the passage of this act the balances standing with the Treasurer of the United States to the respective credits of national banks for deposits made to redeem the circulating notes of such banks, and all deposits thereafter received for like purpose, shall be covered into the Treasury as a miscellaneous receipt, and the Treasurer of the United States shall redeem from the general cash in the Treasury the circulating notes of said banks which may come into his possession subject to redemption; and upon the certificate of the Comptroller of the Currency that such notes have been received by him and that they have been destroyed and that no new notes will be issued in their place, reimbursement of their amount shall be made to the Treasurer, under such regulations as the Secretary of the Treasury may prescribe, from an appropriation hereby created, to be known as 'national bank notes, redemption account.' But the provisions of this act shall not apply to the deposits received under § 3 of the Act of

June 20, 1874, requiring every national bank to keep in lawful money with the Treasurer of the United States a sum equal to five per centum of its circulation, to be held and used for the redemption of its circulating notes; and the balance remaining of the deposits so covered shall, at the close of each month, be reported on the monthly public debt statement as debt of the United States bearing no interest."

Under § 4 of the cited Act of 1874, a national bank which wishes to withdraw its circulating notes and to take up the bonds deposited to secure them, may deposit with the United States Treasurer the required amount in lawful money, either coin or legal-tender notes. 17 A. G. Op. 121.

SECT. 5223. [No Deposit Required for Consolidation]. — "An association which is in good faith winding up its business for the purpose of consolidating with another association shall not be required to deposit lawful money for its outstanding circulation; but its assets and liabilities shall be reported by the association with which it is in process of consolidation."

The Act of 1870 contained no reference to the proviso in § 42 of St. 1864, but it was regarded as broader than its language disclosed, and as meant as a substitute for said § 42 on the subject of the lawful money deposit, so that consolidating banks were not called upon for such deposit at any time. 2 Commissioners' Draft of U. S. Rev. Stats. 2494. This authorizes consolidation. *Bonnet v. First Nat. Bank*, 24 Tex. Civ. App. 613. But a national bank cannot be a partner. *Merchants' Nat. Bank v. Wehrmann*, 69 Ohio St. 160.

SECT. 5224. [Bonds of Liquidating Banks]. — "Whenever a sufficient deposit of lawful money to redeem the

outstanding circulation of an association proposing to close its business has been made, the bonds deposited by the association to secure payment of its notes shall be re-assigned to it, in the manner prescribed by § 5162. And thereafter the association and its shareholders shall stand discharged from all liabilities upon the circulating notes, and those notes shall be redeemed at the Treasury of the United States."

See § 6 of the Act of 1882. This section was amended by the Act of Feb. 18, 1875, ch. 80 (18 St. 316, 320), by adding the following —

"And if any such bank shall fail to make the deposit and take up its bonds for thirty days after the expiration of the time specified, the Comptroller of the Currency shall have power to sell the bonds pledged for the circulation of said bank, at public auction in New York City, and, after providing for the redemption and cancellation of said circulation and the necessary expenses of the sale, to pay over any balance remaining to the bank or its legal representative."

SECT. 5225. [Circulation of Liquidating Banks].—
"Whenever the Treasurer has redeemed any of the notes of an association which has commenced to close its affairs, he shall cause the notes to be mutilated and charged to the redemption account of the association; and all notes so redeemed by the Treasurer shall, every three months, be certified to and destroyed in the manner prescribed in § 5184."

See the above § 6 to the Act of 1882. The Act of Feb. 27, 1877, ch. 69 (19 St. 240, 252), changed "six" to "five" in the second line.

SECT. 5226. [Protest of Bank Circulation]. — “Whenever any national banking association fails to redeem in the lawful money of the United States any of its circulating notes, upon demand of payment duly made during the usual hours of business, at the office of such association, the holder may cause the same to be protested, in one package by a notary public, unless the president or cashier of the association whose notes are presented for payment offers to waive demand and notice of the protest, and, in pursuance of such offer, makes, signs, and delivers to the party making such demand an admission in writing, stating the time of the demand, the amount demanded, and the fact of the non-payment thereof. The notary public, on making such protest, or upon receiving such admission, shall forthwith forward such admission or notice of protest to the Comptroller of the Currency, retaining a copy thereof. If, however, satisfactory proof is produced to the notary public that the payment of the notes demanded is restrained by order of any court of competent jurisdiction, he shall not protest the same. When the holder of any notes causes more than one note or package to be protested on the same day, he shall not receive pay for more than one protest.”

See *Roberts v. Hill*, 23 Fed. 311; § 3 of the Act of 1874 stated in note to § 5191, *supra*. After a circulating note of a national bank had been protested for failure to redeem it in lawful money, an attachment from a State court was levied on moneys of that bank deposited in another national bank to secure a debt to A. Subsequently, a receiver of the first bank was appointed, and without becoming a party to the suit applied to the State court to dissolve the attachment, which motion was denied. He then brought suit against A., the second bank, and the

sheriff, to assert his title to such deposit; and it was held that the levy was void, and the receiver entitled to relief. *Harvey v. Allen*, 16 Blatch. 29.

SECT. 5227. [**Bonds Forfeited if Circulation is Dishonored**]. — "On receiving notice that any national banking association has failed to redeem any of its circulating notes, as specified in the preceding section, the Comptroller of the Currency, with the concurrence of the Secretary of the Treasury, may appoint a special agent, of whose appointment immediate notice shall be given to such association, who shall immediately proceed to ascertain whether it has refused to pay its circulating notes in the lawful money of the United States, when demanded, and shall report to the Comptroller the fact so ascertained. If from such protest, and the report so made, the Comptroller is satisfied that such association has refused to pay its circulating notes and is in default, he shall, within thirty days after he has received notice of such failure, declare the bonds deposited by such association forfeited to the United States, and they shall thereupon be so forfeited."

SECT. 5228. [**Suspension of Business after Default**]. — "After a default on the part of an association to pay any of its circulating notes has been ascertained by the Comptroller, and notice thereof has been given by him to the association, it shall not be lawful for the association suffering the same to pay out any of its notes, discount any notes or bills, or otherwise prosecute the business of banking, except to receive and safely keep money belonging to it, and to deliver special deposits."

Amended by 18 St. 320, ch. 80, by changing the words "of forfeiture of the bonds" in the third line to "thereof." The phrase "deliver special deposits" recognizes the bank's

power to receive them. *Carlisle Bank v. Graham*, 100 U. S. 699; see *First Nat. Bank v. Strang*, 138 Ill. 347, 356. Such deposits are not confined to securities held as collateral to loans, but embrace the public securities of the United States; if the deposit is negligently lost, whether received gratuitously or otherwise, the bank is liable. *Carlisle Bank v. Graham*, *supra*; *Pattison v. Syracuse Bank*, 80 N. Y. 82; *Chattahoochee Nat. Bank v. Schley*, 58 Ga. 369. See *Wiley v. Brattleboro Bank*, 47 Vt. 546; 50 Vt. 388.

SECT. 5229. [Notice to Present Circulation for Redemption]. — “Immediately upon declaring the bonds of an association forfeited for non-payment of its notes, the Comptroller shall give notice, in such manner as the Secretary of the Treasury shall, by general rules or otherwise direct, to the holders of the circulating notes of such association, to present them for payment at the Treasury of the United States; and the same shall be paid as presented in lawful money of the United States; whereupon the Comptroller may, in his discretion, cancel an amount of bonds pledged by such association equal at current market rates, not exceeding par, to the notes paid.”

SECT. 5230. [Bonds sold at Public Auction]. — “Whenever the Comptroller has become satisfied, by the protest or the waiver and admission specified in § 5226, or by the report provided for in § 5227, that any association has refused to pay its circulating notes, he may, instead of canceling its bonds, cause so much of them as may be necessary to redeem its outstanding notes to be sold at public auction in the city of New York, after giving thirty days’ notice of such sale to the association. For any deficiency in the proceeds of all the bonds of an association, when thus sold, to reimburse to the United

States the amount expended in paying the circulating notes of the association, the United States shall have a paramount lien upon all its assets; and such deficiency shall be made good out of such assets in preference to any and all other claims whatsoever, except the necessary costs and expenses of administering the same."

See *Woodward v. Ellsworth*, 4 Col. 580; *Schmidt v. National Bank of Selma*, 22 La. Ann. 314.

SECT. 5231. [**Bonds Sold at Private Sale**]. — "The Comptroller may, if he deems it for the interest of the United States, sell at private sale any of the bonds of an association shown to have made default in paying its notes, and receive therefor either money or the circulating notes of the association. But no such bonds shall be sold by private sale for less than par, nor for less than the market value thereof at the time of sale; and no sales of any such bonds, either public or private, shall be complete until the transfer of the bonds shall have been made with the formalities prescribed by §§ 5162, 5163, 5164."

SECT. 5232. [**Regulations for Redemption Records**]. — "The Secretary of the Treasury may, from time to time, make such regulations respecting the disposition to be made of circulating notes after presentation at the Treasury of the United States for payment, and respecting the perpetuation of the evidence of the payment thereof, as may seem to him proper."

SECT. 5233. [**Redeemed Notes to be Canceled**]. — "All notes of national banking associations presented at the Treasury of the United States for payment shall, on being paid, be canceled."

See § 3 of the Act of June 20, 1874, under § 5191, *supra*.

SECT. 5234. [Appointment and Duties of Receiver]. — "On becoming satisfied, as specified in §§ 5226 and 5227, that any association has refused to pay its circulating notes as therein mentioned, and is in default, the Comptroller of the Currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper. Such receiver, under the direction of the Comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct; and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders. Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the Comptroller, and also make report to the Comptroller of all his acts and proceedings."

See notes to §§ 5139, 5151, 5211; *Sowles v. Witters*, 39 Fed. 403, 408; *Welles v. Graves*, 41 Id. 459. Until there is a judgment of forfeiture, or other extinguishment of the corporate existence, a national bank continues to exist while its assets are in the receiver's hands for distribution. *Chemical Bank v. Hartford Deposit Co.*, 161 U. S. 1, 7; 156 Ill. 522. A Federal court has not, it seems, the power to authorize the compounding by the receiver of the statutory liability of a stockholder in a national bank. *In re Certain Stockholders*, 53 Fed. 38, 41; see *Beckham v. Shackelford*, 8 Tex. Civ. App. 660.

Depositors' claims at the time of the suspension, if proved to the Comptroller's satisfaction, are placed upon the same footing as if they were reduced to a judgment. *Commonwealth Nat. Bank v. Mechanics' Nat. Bank*, 94 U. S. 437.

A Federal question, to be available on writ of error from a State court, must be raised in the case before judgment, and cannot be first claimed in a petition for rehearing. *Turner v. Richardson*, 180 U. S. 87, 92. See also *Meyer v. Richmond*, 172 U. S. 82, 92. The finding of the Comptroller that an assessment is necessary is conclusive as to its necessity and cannot be questioned collaterally. *Aldrich v. Yates*, 95 Fed. 78; *Deweese v. Smith*, 97 Id. 309. The Comptroller's assessments bind the stockholders, although made without notice to them. *Howarth v. Lombard*, 175 Mass. 570, 578. But a right of action by a receiver against a stockholder to recover an assessment does not arise until its necessity is determined and the assessment made by the Comptroller, if it in fact accrues before demand and refusal to pay; hence the limitation runs against such an action only from that time. *Aldrich v. Yates, supra*. The receiver has not such a personal trust as to prevent his assigning a stockholder's liability after it is fixed. *Waldron v. Alling*, 76 N. Y. S. 250. No general advisory or directing power is vested in the court. It is only when debts are bad or doubtful, and it is deemed expedient to sell or compound them, that the court can make an ordering respecting them. *In re Earle*, 92 Fed. 22. A "bad or doubtful debt" does not include a judgment recovered by a receiver against a stockholder on an assessment made by the Comptroller, although such judgment is uncollectible. *In re Earle*, 96 Fed. 678, 679. The ultimate liability of a shareholder is for the full amount of the par value of the stock, if necessary, and when an assessment for a smaller amount has been made and is found to be insufficient, a second assessment will be allowed. *Aldrich v. Yates*, 95 Fed. 78; *Studebaker v. Perry*, 184 U. S. 258. See, generally, *Stuart v. Hayden*, 169 U. S. 2; *American Surety Co. v. Pauly*, 170 Id. 133; *Merrill v. National Bank*, 173 Id. 131; *Robinson v. Southern Nat. Bank*, 180 Id. 295, 305; *Lantry v. Wallace*, 182 Id. 536, 537; *McDonald v. Thompson*, 184 Id. 71, 76; *Earle v. Pennsylvania*, 178 Id. 453.

The appointment of a receiver by the Comptroller under § 5234 is presumably made by and with the concurrence of the head of the Treasury department, within art. 2, § 2, of the Constitution of the United States; and such receiver is an agent and officer of the United States with respect to suits brought by him. *Price v. Abbott*, 17 Fed. 506; *Brinckerhoff v. Bostwick*, 23 Hun, 237; *Stanton v. Wilkeson*, 8 Ben. 357. The certificate of the Comptroller is sufficient evidence of his appointment in an action brought by him. *Platt v. Beebe*, 57 N. Y. 339. He may bring suit in his own name as receiver, or in the name of the bank. He needs no authorization from the Comptroller for the purpose of suing for an ordinary debt due the bank, though otherwise as to a suit against the stockholders. *Bank v. Kennedy*, 17 Wall. 19. But see remarks of Blodgett, J., in *Irons v. Manufacturers' Nat. Bank*, 6 Biss. 301. The receiver may sue the directors in a State court for losses occasioned by their mismanagement, if no proceeding is pending under the national bankrupt act for forfeiture of the bank's charter. *Brinckerhoff v. Bostwick*, 88 N. Y. 52.

Since the titles to the property vest in the receiver, he may maintain the suit in his own name. *Fish v. Olin* (Vt.), 56 Atl. 533. Suits brought by the receiver for the exclusive benefit of the bank's creditors do not come within the letter or the reason of the proviso to § 4 of St. 1882 (note to § 5133, *supra*), the purpose of which is to leave to the jurisdiction of the State courts suits by or against national banks, "except suits between them and the United States, or its officers or agents," where the domicile of the parties does not give jurisdiction to the Federal courts. *Price v. Abbott*, *supra*. A receiver of a national bank may maintain an action in the Circuit Court, without reference to the citizenship of the parties, or the amount involved. *Armstrong v. Trautman*, 36 Fed. 275.

Where an agent has been substituted for the receiver of an insolvent national bank, he seems to stand in the same legal relation as the receiver. *McConville v. Gilmour*, 36

Fed. 277. A suit brought by the receiver cannot be compounded by the Comptroller without leave of court. *Case v. Small*, 4 Woods, 78; 10 Fed. 722. A court has no power to order a receiver to compound debts, which are not bad or doubtful, and such a composition is ineffectual. *Price v. Yates*, 19 Albany Law Journal, 295; 25 Int. Rev. Rec. 113; 7 W. N. C. 51. Otherwise, if the debts are doubtful. *Re Platt*, 1 Ben. 534. A receiver who is directed to sell the assets has no power to exchange, barter, or trade them. *Ellis v. Little*, 27 Kansas, 707. A State court cannot order a receiver to pay a judgment recovered against the bank before his appointment. *Ocean Bank v. Carll*, 7 Hun, 237. Where a receiver of a bank and consul for the United States compromised suits, the compromise will not be afterward opened if no fraud is shown. *Henderson v. Myers*, 11 Phila. 616.

The Comptroller's decision as to the bank's insolvency is conclusive for the purpose of enabling the receiver to sue, although not evidence of the fact of insolvency in an action by the receiver. *Bowden v. Morris*, 1 Hughes, 378.

If the receiver sells property of the bank under § 5234, in pursuance of an order of court, it is a judicial sale, and will not thereafter be set aside before confirmation on account of a higher bid, where a former sale of the same property has been set aside for inadequacy of price. *Re Third Nat. Bank*, 4 Fed. 775; *Re Illinois Bank*, 9 Biss. 535. A district court is competent to order a sale under this section. *Re Platt*, 1 Ben. 534.

The managers of an insolvent bank, when personally sued by the receiver for their alleged mismanagement, are not liable for not requiring in their discretion a bond from the president for the faithful discharge of his official duties, nor for unsafe or irregular investments made without their knowledge or complicity, they not being on the committee of investments; and they may set up the statute of limitations for illegal investments and overdrafts made by the president more than six years before. *Williams v.*

Halliard, 38 N. J. Eq. 373. They are, however, liable if they receive deposits when they know, or may readily learn, that the bank is insolvent. *Delano v. Case*, 17 Ill. App. 531; *Cragie v. Hadley*, 99 N. Y. 131; *Cragie v. Smith*, 14 Abb. N. Cas. 409.

The receiver of a national bank has no greater right in enforcing the collection of the bank's assets than the bank itself would have had, for he holds only the estate and title of the bank in its assets. *Casey v. Credit Mobilier*, 2 Woods, 77.

The Act of March 2, 1897, ch. 354 (29 St. 600), provided —

“That section three of an Act entitled ‘An Act authorizing the appointment of receivers of national banks, and for other purposes,’ approved June thirtieth, eighteen hundred and seventy-six, as amended by an Act approved August third, eighteen hundred and ninety-two, be, and hereby is, amended so as to read as follows:

“‘SEC. 3. That whenever any association shall have been or shall be placed in the hands of a receiver, as provided in section fifty-two hundred and thirty-four and other sections of the Revised Statutes of the United States, and when, as provided in section fifty-two hundred and thirty-six thereof, the Comptroller of the Currency shall have paid to each and every creditor of such association, not including shareholders who are creditors of such association, whose claim or claims as such creditor shall have been proved or allowed as therein prescribed, the full amount of such claims, and all expenses of the receivership and the redemption of the circulating notes of such association shall have been provided for by depositing lawful money of the United States with the Treasurer of the United States, the Comptroller of the Currency shall call

a meeting of the shareholders of such association by giving notice thereof for thirty days in a newspaper published in the town, city, or county where the business of such association was carried on, or if no newspaper is there published, in the newspaper published nearest thereto. At such meeting the shareholders shall determine whether the receiver shall be continued and shall wind up the affairs of such association, or whether an agent shall be elected for that purpose, and in so determining the said shareholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the majority of the stock in value and number of shares shall be necessary to determine whether the said receiver shall be continued, or whether an agent shall be elected. In case such majority shall determine that the said receiver shall be continued, the said receiver shall thereupon proceed with the execution of his trust, and shall sell, dispose of, or otherwise collect the assets of the said association, and shall possess all the powers and authority, and be subject to all the duties and liabilities originally conferred or imposed upon him by his appointment as such receiver, so far as the same remain applicable. In case the said meeting shall, by the vote of a majority of the stock in value and number of shares, determine that an agent shall be elected, the said meeting shall thereupon proceed to elect an agent, voting by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the person who shall receive votes representing at least a majority of stock in value and number shall be declared the agent for the purposes hereinafter provided; and whenever any of the shareholders of the association shall, after the election of such agent, have

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executed and filed a bond to the satisfaction of the Comptroller of the Currency, conditioned for the payment and discharge in full of each and every claim that may thereafter be proved and allowed by and before a competent court, and for the faithful performance of all and singular the duties of such trust, the Comptroller and the receiver shall thereupon transfer and deliver to such agent all the undivided or uncollected or other assets of such association then remaining in the hands or subject to the order and control of said Comptroller and said receiver, or either of them; and for this purpose said Comptroller and said receiver are hereby severally empowered and directed to execute any deed, assignment, transfer, or other instrument in writing that may be necessary and proper; and upon the execution and delivery of such instrument to the said agent the said Comptroller and the said receiver shall by virtue of this Act be discharged from any and all liabilities to such association and to each and all the creditors and shareholders thereof. Upon receiving such deed, assignment, transfer, or other instrument the person elected such agent shall hold, control, and dispose of the assets and property of such association which he may receive under the terms hereof for the benefit of the shareholders of such association, and he may in his own name, or in the name of such association, sue and be sued and do all other lawful acts and things necessary to finally settle and distribute the assets and property in his hands, and may sell, compromise, or compound the debts due to such association, with the consent and approval of the circuit or district court of the United States for the district where the business of such association was carried on, and shall at the conclusion of his trust render to such district or cir-

cuit court a full account of all his proceedings, receipts, and expenditures as such agent, which court shall, upon due notice, settle and adjust such accounts and discharge said agent and the sureties upon said bond. And in case any such agent so elected shall refuse to serve, or die, resign, or be removed, any shareholder may call a meeting of the shareholders of such association in the town, city, or village where the business of the said association was carried on, by giving notice thereof for thirty days in a newspaper published nearest thereto, at which meeting the shareholders shall elect an agent, voting by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and when such agent shall have received votes representing at least a majority of the stock in value and number of shares, and shall have executed a bond to the shareholders conditioned for the faithful performance of his duties, in the penalty fixed by the shareholders at said meeting, with two sureties, to be approved by a judge of a court of record, and file said bond in the office of the clerk of a court of record in the county where the business of said association was carried on, he shall have all the rights, powers, and duties of the agent first elected as hereinbefore provided. At any meeting held as hereinbefore provided administrators or executors of deceased shareholders may act and sign as the decedent might have done if living, and guardians of minors and trustees of other persons may so act and sign for their ward or wards or *cestui que trust*. The proceeds of the assets or property of any such association which may be undistributed at the time of such meeting or may be subsequently received shall be distributed as follows:

“First. To pay the expenses of the execution of the trust to the date of such payment.

“Second. To repay any amount or amounts which have been paid in by any shareholder or shareholders of such association upon and by reason of any and all assessments made upon the stock of such association by the order of the Comptroller of the Currency in accordance with the provisions of the statutes of the United States; and

“Third. The balance ratably among such stockholders, in proportion to the number of shares held and owned by each. Such distribution shall be made from time to time as the proceeds shall be received and as shall be deemed advisable by the said Comptroller or said agent.”

SEC. 5235. [Notice to Creditors of Insolvent Banks]. —

“The Comptroller shall, upon appointing a receiver, cause notice to be given by advertisement in such newspapers as he may direct, for three consecutive months, calling on all persons who may have claims against such association to present the same and to make legal proof thereof.”

See note, § 5242; *Richmond v. Irons*, 121 U. S. 27, 47; *Earle v. Pennsylvania*, 178 Id. 449, 452, 453; *Merrill v. National Bank*, 173 Id. 131; *Davis v. Stevens*, 17 Blatch. 259; *Eaton v. Pacific Bank*, 144 Mass. 260; *Wright v. Merchants' Bank*, 3 Cent. L. Journ. 351; *Shoe & L. Bank v. Mechanics' Nat. Bank*, 89 N. Y. 440; *Johnston v. United States*, 17 Ct. Cl. 157, 168; *Jackson v. United States*, 20 Id. 298; *Chemical Nat. Bank v. Bailey*, 12 Blatch. 480; *Venango Nat. Bank v. Taylor*, 56 Penn. St. 14; *Turner v. First Nat. Bank*, 26 Iowa, 562; *Van Antwerp v. Hulburd*, 7 Blatch. 426, 437; *Price v. Abbott*, 17 Fed. 506; *Hendee v. Conn. & P. R. R.*, 26 Id. 677; *Burton v. Burley*, 13 Id. 811; *Frelinghuysen v. Baldwin*, 12 Id. 395; *Armstrong v. Scott*, 36 Id. 63, 65. See §§ 1, 3 of St. 1876, stated in note, § 5220, *supra*.

"*Under the direction of the Comptroller*" means no more than that the receiver shall be subject to the direction of the Comptroller, but it does not mean that he shall do no act without special instructions. It is his duty to collect the assets and debts of the association, and as to these no special direction is needed. *Bank of Kennedy*, 17 Wall. 19. In an action by the receiver against a stockholder, the authorization of the Comptroller must be averred. *Id.*

"*Debts.*" — This word includes the contracts, debts, and engagements mentioned in Rev. Stats. § 5151. *Stanton v. Wilkeson*, *supra*. The personal property of an insolvent national bank in the hands of a receiver is exempt from taxation under State laws. *Rosenblatt v. Johnston*, 104 U. S. 462. A county treasurer may not levy upon the property of a national bank to satisfy a tax levied after the bank has become insolvent against a claim for the property by a receiver subsequently appointed. *Woodward v. Ellsworth*, 4 Col. 580. The Comptroller, though he is a party to a suit, cannot submit the government to the jurisdiction of the ordinary courts, to determine the conflicting claims of it and other creditors in the funds of a national bank. *Case v. Terrell*, 11 Wall. 199. The powers conferred upon the Comptroller of the Currency by § 5234 do not exclude the authority of a competent tribunal to appoint a receiver in other cases, for in cases not within the special provisions of this Title a national bank may be proceeded against in the same manner as any other debtor or corporation. *Irons v. Manufacturers' Nat. Bank*, *supra*.

A court may appoint a receiver upon a judgment-creditor's bill in a case where the Comptroller is not authorized to make an appointment. *Wright v. Merchants' Nat. Bank*, 1 Flippin, 568. It is doubted whether the Comptroller has authority to appoint a receiver after one has been appointed by the court, to enforce the stockholders' liability under the statute of 1876. *Harvey v.*

Lord, 11 Biss. 144; 10 Fed. 236. A court of equity will appoint a receiver on the application of a depositor if it appears that the bank officers have been making preferential payments. *Irons v. Manufacturers' Nat. Bank, supra*. A receiver appointed by the Comptroller is not liable in equity to the owner of real estate for rents thereof which have been received by him in his official capacity and paid into the Treasury. *Hitz v. Jenks*, 123 U. S. 297.

The bank does not cease to be a corporation upon the appointment of a receiver, for the association as a legal entity continues to exist, and it may sue and be sued, complain and defend, in all cases where it may be necessary that the corporate name of the association shall be used for that purpose in closing its business and winding up its affairs under the provisions of the act which created it. *Bank of Bethel v. Pahquioque Bank*, 14 Wall. 383.

If mortgages among the assets of a national bank were given in violation of the insolvency law of the State, they are governed by such law and the bank takes them subject to the limitations thereof. *Witters v. Sowles*, 32 Fed. 758. The debtors of a bank when sued by a receiver cannot inquire into the legality of his appointment. It is sufficient for the purposes of such a suit that he has been appointed, and is receiver in fact. As to debtors, the action of the Comptroller in making the appointment is conclusive until set aside on the application of the bank. The bank may move in that behalf, but debtors cannot. *Cadle v. Baker*, 20 Wall. 650.

The Act of March 29, 1886, ch. 28 (24 St. 8), enacts —

“That whenever the receiver of any national bank duly appointed by the Comptroller of the Currency, and who shall have duly qualified and entered upon the discharge of his trust, shall find it in his opinion necessary, in order to fully protect and benefit his said trust, to the extent of any and all equities that such trust may have in any

property, real or personal, by reason of any bond, mortgage, assignment, or other proper legal claim attaching thereto, and which said property is to be sold under any execution, decree of foreclosure, or proper order of any court of jurisdiction, he may certify the facts in the case, together with his opinion as to the value of the property to be sold, and the value of the equity his said trust may have in the same, to the Comptroller of the Currency, together with a request for the right and authority to use and employ so much of the money of said trust as may be necessary to purchase such property at such sale.

“SEC. 2. That such request, if approved by the Comptroller of the Currency, shall be, together with the certificate of facts in the case, and his recommendation as to the amount of money which, in his judgment, should be so used and employed, submitted to the Secretary of the Treasury, and if the same shall likewise be approved by him, the request shall be by the Comptroller of the Currency allowed, and notice thereof, with copies of the request, certificate of facts, and indorsement of approvals, shall be filed with the Treasurer of the United States.

“SEC. 3. That whenever any such request shall be allowed as hereinbefore provided, the said Comptroller of the Currency shall be, and is, empowered to draw upon and from such funds of any such trust as may be deposited with the Treasurer of the United States for the benefit of the bank in interest, to the amount as may be recommended and allowed and for the purpose for which such allowance was made: *Provided, however,* That all payments to be made for or on account of the purchase of any such property and under any such allowance shall be made by the Comptroller of the Currency direct, with the approval

of the Secretary of the Treasury, for such purpose only and in such manner as he may determine and order."

By the Act of March 3, 1887, ch. 373 (24 St. 554), and by the Act of August 13, 1888, ch. 866 (25 St. 436), it is provided —

"That whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property such receiver or manager shall manage and operate such property according to the requirements of the valid laws of the State in which such property shall be situated in the same manner the owner or possessor thereof would be bound to do if in possession thereof. Any receiver or manager who shall wilfully violate the provisions of this section shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine not exceeding three thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"SEC. 3. That every receiver or manager of any property appointed by any court of the United States may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be subject to the general equity jurisdiction of the court in which such receiver or manager was appointed, so far as the same shall be necessary to the ends of justice.

"SEC. 4. That all national banking associations established under the laws of the United States shall, for the purposes of all actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located; and in such

cases the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State. The provisions of this section shall not be held to affect the jurisdiction of the courts of the United States in cases commenced by the United States or by direction of any officer thereof, or cases for winding up the affairs of any such bank."

SECT. 5236. [Distribution of Assets of Insolvent Banks].

—"From time to time, after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the Comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated; and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives, in proportion to the stock by them respectively held."

See *Eastern Townships Bank v. Vermont Bank of St. Albans*, 22 Fed. 186; *Armstrong v. Scott*, 36 Id. 63, 65; *Price v. Abbott*, 17 Id. 506; *Roberts v. Hill*, 24 Id. 571; *Jackson v. United States*, 20 Ct. Cl. 298. §§ 1, 3, of St. 1876, stated in note to § 5220, *supra*. This section does not repeal the statutes which give to the government priority over other creditors. *United States v. Cook County Bank*, 9 Biss. 55. The only claims the Comptroller can recognize in the settlement of the affairs of the bank are those which are shown by proof satisfactory to him or by the adjudication of a competent court to have had their origin in some-

thing done before the insolvency. It is clearly his duty, in paying dividends, to take the value of the claim at that time as the basis of distribution. Where the claim is established by judgment, after the Comptroller has refused to allow it, the claimant is entitled to share in dividends upon the debt and interest included in the judgment as of the day the bank failed; not upon the basis of the judgment, if it provides for interest subsequent to its rendition, *White v. Knox*, 111 U. S. 784. A receiver's decision upon the validity of a claim presented to him for a dividend is not final. The creditor may proceed against the bank in a proper State court to have the validity of his claim judicially determined. *Bank of Bethel v. Pahquioque Bank*, 14 Wall. 383.

The rule in bankruptcy which requires the holder of collateral security to exhaust it and credit the proceeds on his claim, or to surrender it, before he can prove his claim, is not hereby adopted for national banks. *Merrill v. National Bank*, 173 U. S. 131, 146. See, generally, *Earle v. Pennsylvania*, 178 U. S. 499, 452; *Studebaker v. Perry*, 184 Id. 258, 260.

The rules of set-off, legal and equitable, are not abrogated by this section, or by § 5242. *Scott v. Armstrong*, 146 U. S. 499; *Snyder v. Armstrong*, 37 Fed. 18, 22; *Mercer v. Dyer*, 15 Mont. 317; *King v. Armstrong*, 50 Ohio St. 221; *Armstrong v. Warner*, 49 Id. 376. A lien given by one national bank to its correspondent, by agreement, to secure the latter's deposits, is not lost by the bank's subsequent insolvency. *Bell v. Hanover Nat. Bank*, 57 Fed. 821. A State law is invalid, under this section, which allows a preference to deposits made in national banks by savings banks. *Davis v. Elmira Savings Bank*, 161 U. S. 275; 142 N. Y. 590; *Auburn Savings Bank v. Hayes*, 61 Fed. 911; *Spokane County v. Clark*, Id. 538.

"Court of competent jurisdiction." Whether such right of set-off exists is not a Federal question. *Tehan v. First*

Nat. Bank, 39 Fed. 577. A district court of the United States is such a court. *Re Platt*, 1 Ben. 534. Claims of depositors when proved to the satisfaction of the Comptroller have the same efficacy as judgments, and bear interest from the time demand was made. An action may be maintained to recover the interest. *National Bank v. Mechanics' Nat. Bank*, 94 U. S. 437. If the bank, by its default, initiated proceedings which resulted in a transfer of the money of its depositors to a receiver, and thus put it out of its own power to pay its depositors when called upon to do so, they are entitled to interest without having made a demand. Interest should be allowed by the Comptroller if a sufficient fund is realized to pay all claims against the bank before the surplus is appropriated to stockholders. *Chemical Nat. Bank v. Bailey*, 12 Blatch. 480. Interest may be recovered in an action of *assumpsit* against the bank, but not against the receiver or Comptroller. *Id.* The language that "after full provision has been first made for refunding to the United States any such deficiency in redeeming the notes of such association," excludes the idea of priority in favor of the government over private creditors in the assets of a national bank for payment of deposits made therein to the credit of United States officers, including the treasurer, a disbursing officer, and the register of a district court, after the fund which may be realized from the bonds held by the United States as security for such deposits is exhausted. 13 A. G. Op. 528.

SECT. 5237. [Bank may Enjoin Further Proceedings]. — "Whenever an association against which proceedings have been instituted, on account of any alleged refusal to redeem its circulating notes as aforesaid, denies having failed to do so, it may, at any time within ten days after it has been notified of the appointment of an agent, as provided in section fifty-two hundred and twenty-seven,

apply to the nearest circuit, or district, or Territorial court of the United States to enjoin further proceedings in the premises; and such court, after citing the Comptroller of the Currency to show cause why further proceedings should not be enjoined, and after the decision of the court or finding of the jury that such association has not refused to redeem its circulating notes, when legally presented, in the lawful money of the United States, shall make an order enjoining the Comptroller, and any receiver acting under his direction, from all further proceedings on account of such alleged refusal."

Hendee v. Conn. & P. R. R., 26 Fed. 677; *Witters v. Foster*, Id. 737.

SECT. 736 provides that —

"All proceedings by any national banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to national banking associations, shall be had in the district where such association is located."

SECT. 5238. [*Expenses of Receivership — How Paid*]. — "All fees for protesting the notes issued by any national banking association shall be paid by the person procuring the protest to be made, and such association shall be liable therefor; but no part of the bonds deposited by such association shall be applied to the payment of such fees. All expenses of any preliminary or other examinations into the condition of any association shall be paid by such association. All expenses of any receivership shall be paid out of the assets of such association before distribution of the proceeds thereof."

Gibson v. Peters, 35 Fed. 721. If a United States district attorney sues for the receiver of a national bank, his

compensation for such services is prescribed by §§ 823-827, and he cannot recover more under this section. *Gibson v. Peters*, 150 U. S. 342; *Mullett v. United States*, Id. 566, 571; see 19 A. G. Op. 152. The intent of this section appears to be that all expenses incurred in administering the affairs of the bank shall be paid out of its assets. 19 A. G. Op. 634.

SECT. 5239. [Forfeiture of Charter]. — “If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate, any of the provisions of this Title, all the rights, privileges, and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudged by a proper circuit, district, or Territorial court of the United States, in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person shall have sustained in consequence of such violation.”

See §§ 1, 3, of St. 1876, stated in note to § 5220, *supra*. *Movius v. Lee*, 24 Blatch. 291; 30 Fed. 298; *Stephens v. Monongahela Bank*, 88 Penn. St. 157; *Cadle v. Tracy*, 11 Blatch. 101. A shareholder cannot maintain a suit against the president and directors of the bank for their mismanagement and negligence, which causes the bank to become insolvent and his stock worthless. *Conway v. Halsey*, 44 N. J. L. 462. But where the bank and its receiver and the Comptroller of the Currency refuse to bring or sanction a suit for this cause, a stockholder, who

had contributed to pay the debts of the bank, was held entitled to bring such suit in a State court. *Nelson v. Burrows*, 9 Abb. N. Cas. 280. And where the receiver was one of the directors charged with fault, it was held that the suit was maintainable by the stockholders in a State court, or by one or more of them, on behalf of all, if numerous. *Brinckerhoff v. Bostwick*, 88 N. Y. 52.

The limitation prescribed by § 1047 (limiting the time when criminal actions may be brought to within five years after the offence) applies to proceedings to enforce this personal liability. *Welles v. Graves*, 41 Fed. 459. So does a State statute of limitations. *Cockrill v. Butler*, 78 Fed. 679. The Comptroller appears to have a discretion as to instituting proceedings for a violation of the banking law by directors, 19 A. G. Op. 634. Excessive loans made by a director of a national bank are ground for a suit against him, although the bank's charter has not been declared forfeited. *Stephens v. Overstolz*, 43 Fed. 771. As in such case the right is to damages, the implication is that a suit at law, and not in equity, is the appropriate proceeding; and as the damages recovered appear to be assets of the bank, the receiver alone, under the direction of the Comptroller, can sue to recover the same. *National Exchange Bank v. Peters*, 44 Fed. 13, 15; *Bailey v. Mosher*, 63 Id. 488; *Hayden v. Thompson*, 67 Id. 273; *Gerner v. Thompson*, 74 Id. 125; see *National Bank v. Wade*, 84 Id. 10. Under § 5239, nothing short of action of the directors, by either knowingly violating, or knowingly permitting the officers of the bank to violate, the statutory provisions, justifies the forfeiture of its charter, and therefore the act of its cashier in making a loan in excess of the statutory limitation does not meet the requirements of this section. *Trenholm v. Commercial Nat. Bank*, 38 Fed. 323, 325; see also *Witters v. Sowles*, 31 Fed. 1.

The directors of a bank, being agents of the corporation, are bound to act within the scope of its charter and by-laws, and to exercise reasonable care and dili-

gence in the discharge of their duties. If guilty of culpable negligence, they are personally liable therefor to the corporation, while it is a going concern, and to its receiver when it has become insolvent even though franchises have not been forfeited. *Cockrill v. Cooper*, 86 Fed. 7, 13. See, generally, *Cal. Nat. Bank v. Thomas*, 171 U. S. 441, 444; *Bond v. Schneider*, 124 Fed. 230.

SECT. 5240. [**National Bank Examiners**]. — “The Comptroller of the Currency, with the approval of the Secretary of the Treasury, shall, as often as shall be deemed necessary or proper, appoint a suitable person or persons to make an examination of the affairs of every banking association, who shall have power to make a thorough examination into all the affairs of the association, and in doing so to examine any of the officers and agents thereof on oath; and shall make a full and detailed report of the condition of the association to the Comptroller. Every person appointed to make such examination shall receive for his services at the rate of five dollars for each day by him employed in such examination, and two dollars for every twenty-five miles he shall necessarily travel in the performance of his duty, which shall be paid by the association by him examined. But no person shall be appointed to examine the affairs of any banking association of which he is a director or other officer.”

See note to § 5211; *Briggs v. Spaulding*, 141 U. S. 132, 140. *American Surety Co. v. Pauly*, 170 Id. 133, 138.

A bank examiner represents the government, and is not an officer or agent of the bank, and cannot bind it by any act done or undertaken in its behalf. *Witters v. Sowles*, 32 Fed. 762.

Amended by the Act of Feb. 19, 1875, ch. 89 (18 St. 329), by striking out all after the first sentence of the section, and substituting therefor the following —

“That all persons appointed to be examiners of national banks not located in the redemption cities specified in section five thousand one hundred and ninety-two of the Revised Statutes of the United States, or in any one of the States of Oregon, California, and Nevada, or in the Territories, shall receive compensation for such examinations as follows : For examining national banks having a capital less than \$100,000, \$20 ; those having a capital of \$100,000, and less than \$300,000, \$25 ; those having a capital of \$300,000, and less than \$400,000, \$35 ; those having a capital of \$400,000, and less than \$500,000, \$40 ; those having a capital of \$500,000, and less than \$600,000, \$50 ; those having a capital of \$600,000 and over, \$75, — which amounts shall be assessed by the Comptroller of the Currency upon, and paid by, the respective associations so examined ; and shall be in lieu of the compensation and mileage heretofore allowed for making said examinations. And persons appointed to make examination of national banks in the cities named in Rev. Stats. § 5192, or in any one of the States of California, Oregon, and Nevada, or in the Territories, shall receive such compensation as may be fixed by the Secretary of the Treasury upon the recommendation of the Comptroller of the Currency ; and the same shall be assessed and paid in the manner hereinbefore provided.”

SECT. 5241. [Limitation of Visitorial Powers]. — “No association shall be subject to any visitorial powers other than such as are authorized by this Title, or are vested in the courts of justice.”

This section implies that courts may exercise visitorial powers over national banks ; and as these powers are usually, if not always, exerted through the agency of a

receiver, they are to be regarded as justifying the appointment of one in cases where the Comptroller is not authorized to appoint. *Wright v. Merchants' Nat. Bank*, 1 Flippin, 568. Visitation in law is the act of a superior or superintending officer, who visits a corporation to examine into its manner of conducting business, and to enforce an observance of its laws or regulations. It means inspection, superintendence, direction, regulation. This section does not prohibit the service upon the officers of a national bank of compulsory State process to obtain the names of its depositors with a view to assessing them for the purposes of taxation. *First Nat. Bank v. Hughes*, 6 Fed. 737. Neither does it prevent a *bona fide* stockholder from examining its books, accounts, loans, etc., in order to determine the value of his stock. *Harkness v. Guthrie* (Utah), 75 Pac. 624.

SECT. 5242. [Illegal Preference of Creditors]. — “All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void. No attachment, injunction, or execution shall be issued against such association or its property before final judgment in any suit, action, or proceeding in any State, county, or municipal court.”

See note to § 5236; *Armstrong v. Scott*, 36 Fed. 63, 65; *Citizens' Bank v. Dowd*, 35 Id. 340, 342; *Wright v. Merchants' Bank*, 3 Cent. L. J. 351; *National Shoe & L. Bank v. Mechanics' Nat. Bank*, 89 N. Y. 467; *Venango Nat. Bank v. Taylor*, 56 Penn. St. 14; *Stewart v. Nat. Union Bank*, 2 Abb. U. S. 424; *Hayden v. Chemical Nat. Bank*, 80 Fed. 587; *Ballard v. Burton*, 64 Vt. 387, 392. The meaning of this section is not different from the meaning of St. June 3, 1864, ch. 106, § 52, from which it was taken. *National Security Bank v. Butler*, 129 U. S. 223. The latter part prohibiting attachment is not repealed by § 4 of St. 1882 (*ante*, note to § 5133). *Raynor v. Pacific Bank*, 93 N. Y. 371.

This provision applies to solvent national banks; the Act of July 12, 1882, stated under § 5133, *supra*, did not repeal the earlier statutes prohibiting attachments against such banks, and merely prescribes the forum for suits by or against them. *Van Reed v. People's Nat. Bank*, 173 N. Y. 314; *Searles Bros. v. Smith Grain Co.*, 80 Miss. 688.

These prohibitions are constitutional, and apply to suits in either the Federal or the State courts. *Willard Manuf. Co. v. Merchants' Nat. Bank*, 130 N. C. 609; *Dennis v. First Nat. Bank*, 127 Cal. 453.

Insolvency is such a condition of affairs that the firm or concern is unable to meet its obligations as they mature in the usual course of business. An act of insolvency takes place when this state of affairs is demonstrated, and the firm or concern has actually failed to meet some of its obligations. *Roberts v. Hill*, 24 Fed. 571. A bank is in contemplation of insolvency when it becomes reasonably apparent to its officers that it will presently be unable to meet its obligations and will be obliged to suspend its ordinary operations. *Id.* "Insolvency" as used in this section means the same as it does in the bankruptcy act. If the bank is in contemplation of insolvency it is not necessary that the party to whom the transfer is made should be aware of it. *Case v. Citizens' Bank*, 2 Woods,

23. "Insolvency," as here used, means such an act as would be an act of insolvency on the part of an individual banker. *Irons v. Manufacturers' Nat. Bank*, 6 Biss. 301. A bank commits an act of insolvency simply by refusing to pay its obligations. *Market Bank v. Pacific Bank*, 30 Hun, 50.

In *Roberts v. Hill*, 23 Blatch. 191 ; 23 Fed. 311, which was a receiver's bill to set aside a pledge of a promissory note made by the officers of a national bank to the defendant's intestate to secure a deposit, Wheeler, J., said: "The right to have the pledge set aside and recover the note or its proceeds depends entirely upon Rev. Stats. § 5242. There is no question about the validity of the deposit, nor but that the pledge would be good to secure it at common law. . . . What would be an act of insolvency is not defined, but would be the failure to redeem the circulating notes according to § 5226, as that is the only thing which would authorize the Comptroller of the Currency, before the Act of June 30, 1876, stated under § 5220, *supra*, to take possession of a national bank and appoint a receiver."

Preference. Intent. — An intent to give a preference is presumed when a payment is made to a creditor by a bank whose officers know of its insolvency, and therefore know that it cannot pay all its creditors in full. This intent is not rebutted by showing that the debtor has also another motive, as an expectation of pecuniary or other benefit to himself; or by postponing the failure of the bank. *Roberts v. Hill*, *supra*, overruling 23 Fed. 311. In order to create a preference it must be given to secure or pay a pre-existing debt, and the giving of a security to a person who loans money to the bank knowing it to be in an embarrassed condition is not a preference over other creditors. *Casey v. Credit Mobilier*, 2 Woods, 77. As to preferences, see further *Security Bank v. Price*, 22 Fed. 697.

This section does not apply to a transfer of property by way of security for a loan then obtained, from which all

creditors presumptively receive a benefit, even though the transfer was to be security for an antecedent debt, in which case the creditor, if he acted in good faith, could retain it as security for his last advances. *Stapylton v. Stockton*, 91 Fed. 326, 330.

Payments made in the ordinary course of business by a national bank to a creditor, who receives them innocently, are not void, if the association at the time had become so insolvent that its debts were greatly in excess of its assets, and its officers knew, or should have known, the fact, and that probably at no very distant time it would be obliged to suspend. *First Nat. Bank v. Hall*, 119 Ala. 64; *Hayden v. Chemical Nat. Bank*, 84 Fed. 874; which case also see as to when title passes, in remittances sent by mail. The fact that certain notes were put into a transferee's hands for payment by him, and he, instead of paying them, wrongfully kept them, will not be sufficient to set aside the transfer of such notes. *Alabama Ry. Co. v. Austin*, 94 Fed. 897, 901. See, generally, *Merrill v. National Bank*, 173 U. S. 131, 139; *McDonald v. Chemical Nat. Bank*, 174 Id. 610. As to set-offs, see *Mercer v. Dyer*, 15 Mont. 317; *First Nat. Bank v. Turner*, 154 Ind. 456; *Newport v. Mudgett*, 18 Wash. 271. That an assignee's remedy for fraud is at law, see *Farmers & M. Bank v. Hall*, 120 Ala. 14.

The transfer or payment, in order to be void, must be made after the commission of an act of insolvency, or in contemplation thereof, and with a view of giving a preference to one creditor over another, or with a view to prevent the application of the assets as provided by law. If the directors of a bank have voted to close it and go into liquidation, any transfer of its assets thereafter to a creditor, whereby he secures a preference, is presumed to be made with an intent to prefer him. *National Security Bank v. Price*, 22 Fed. 697. With respect to unrecorded transfers of the shares, no registry being required by statute, the failure to record is not evidence of fraud; and

such a transfer will take precedence over a subsequent attachment in behalf of a creditor without notice. *Continental Nat. Bank v. Elliott Nat. Bank*, 7 Fed. 369; *Scott v. Pequonnock Nat. Bank*, 15 Id. 494. Where a bank cashier was also an executor, and in the latter capacity bought accepted bills of exchange which he deposited in the bank in a box belonging to the estate, the bills were held not to be assets of the bank upon its subsequent failure, and their transfer was not invalidated by this section. *Tuttle v. Frelinghuysen*, 38 N. J. Eq. 12. It is sufficient under this section to invalidate a transfer of assets that is made in contemplation of insolvency, with a view to prevent their application in the manner prescribed in this chapter, or with a view to the preference of one creditor over another, and it is not necessary to such invalidity that there should be any knowledge or suspicion on the part of the creditor that the debtor is insolvent or contemplates insolvency. *National Security Bank v. Butler*, 129 U. S. 223.

Back payments by the bank are valid when it is not shown that they were made in contemplation of insolvency, or to prevent the application of the bank's assets as required by the statutes. *Hayes v. Beardsley*, 136 N. Y. 299. The phrases "evidence of debt" and "assets of the bank" do not include renewal notes held by a national bank, when the original notes have not been returned. *Decatur Nat. Bank v. Johnston*, 97 Ala. 655.

A general lien does not arise upon securities accidentally in the possession of a bank, or not in its possession in the course of its business as such, or when the particular mode of dealing is inconsistent with such a lien. *Yardley v. Philler*, 167 U. S. 345, 359. The bank has clearly no equitable lien on the shares of one of its stockholders who has not delivered them to it, but who, being indebted to it, agreed that they should be treated as collateral. *Buffalo German Ins. Co. v. Third Nat. Bank* 162 N. Y. 163; *Smith v. First Nat. Bank*, 115 Ga. 608.

No attachment can issue from a circuit court of the United States in an action against a national bank before judgment. And if such attachment is made on mesne process and then dissolved by a bond with sureties, the bond is void and the sureties discharged. If the sureties have received indemnity from the bank, a bill may be maintained against them by the receiver to compel them to transfer their collateral to him. *Pacific Nat. Bank v. Mixter*, 124 U. S. 721, reversing *Price v. Coleman*, 22 Fed. 694; *Bank of Montreal v. Fidelity Nat. Bank*, 1 N. Y. Suppl. 852; *First Nat. Bank v. La Due* (Minn.), 40 N. W. 367. No attachment can be issued from a State court, against a national bank before final judgment, whether such bank be located in this State or not. *Central Nat. Bank v. Richland Nat. Bank*, 52 How. Pr. 136; *Rhoner v. First Nat. Bank of Allentown*, 14 Hun, 126. See however *Southwick v. Nat. Bank of Memphis*, 7 Hun, 96. *Contra*, *Holmes v. Bank of Wilmington*, 18 S. C. 31; *Robinson v. Bank of New Berne*, 58 How. Pr. 306; 81 N. Y. 385; *Freemen Manuf. Co. v. National Bank of the Republic*, 160 Mass. 398. The property of an insolvent national bank cannot be attached upon a writ issued from a State court before final judgment. *National S. Bank v. Butler*, 129 U. S. 223; *Garner v. Second Nat. Bank*, 66 Fed. 368; *Safford v. Plattsburgh Nat. Bank*, 61 Vt. 373; *Raynor v. Pacific Bank*, 93 N. Y. 371; *Planters' L. & S. Bank v. Berry*, 91 Ga. 264. But this is not violated by the appointment of a permanent receiver on the application of a stockholder made by a State court as part of the final judgment in the cause. *Cogswell v. Second Nat. Bank* (Conn.), 56 Atl. 574. In *Robinson v. Bank of New Berne*, *supra*, the prohibition was held to apply only to insolvent corporations or to such as are about to become so. In *Cracken v. Covington City Nat. Bank*, 4 Fed. 602, it was questioned whether the provision in § 5242 against attachments by State courts before final judgment is general and applicable to all national banking associations. That provision does

not give the receiver a greater right of property than the bank possessed against the owner. *Corn Exchange Bank v. Blye*, 101 N. Y. 303; 37 Hun, 473. Under this section an attachment, invalid by reason of the bank's insolvency, is not made valid by further capital being afterwards acquired by the bank, and it is not estopped from questioning the validity of the attachment by paying in full a large amount of its debts after the attachment issued. *Raynor v. Pacific Bank*, 93 N. Y. 371; *Shoe & Leather Bank v. Mechanics' Bank*, 89 N. Y. 467. See *Harvey v. Allen*, 16 Blatch. 29, in notes to § 5226. The property of a national bank organized under this Title, attached at the suit of an individual creditor, after the bank has become insolvent, cannot be subjected to sale for the payment of his demand, against the claim for the property by a receiver, of the bank subsequently appointed. *National Bank v. Colby*, 21 Wall. 609.

This section does not prevent a Federal court from enjoining a national bank, or from continuing an injunction granted by a State court after the cause is removed therefrom. *Hower v. Weiss Malting Co.*, 55 Fed. 356.

An attachment against a bank as garnishee is not an attachment against the bank, or its property, nor a suit against it, within this section; but it is bound to account to the plaintiff for the property it then holds for the debtor. *Earle v. Pennsylvania*, 178 U. S. 449, 454; *Com'th v. Chestnut St. Nat. Bank*, 189 Penn. St. 606; *Conway v. Same*, Id. 610. National bank stock can be sold on execution under State statutes. *Braden's Estate*, 165 Penn. St. 184. In *Lake Nat. Bank v. Wolfeborough Sav. Bank*, 78 Fed. 517, it was held that the United States circuit court and the State courts have concurrent jurisdiction of proceedings to wind up the affairs of a national bank.

The complaint, in an action brought by a receiver to recover the value of certain notes of a national bank which the defendant was alleged to have wrongfully converted, averred, in one count, that one of the officers of the bank

surreptitiously took the notes from its vaults and delivered them to the defendant, which he took with knowledge of the circumstances; in another count that the bank, in contemplation of insolvency, and with a view to prevent the application of its assets in the way prescribed by law, transferred them to the defendant, and it was held that there was no misjoinder of causes of action, nor an attempt to unite a common-law cause of action with a cause of action under the statute; the second count is not objectionable because it states merely conclusions of law, *Brown v. Carbonate Bank*, 34 Fed. 776.

SECT. 5243. [Use of "National" in Titles].—"All banks not organized and transacting business under the national currency laws, or under this Title, and all persons or corporations doing the business of bankers, brokers, or savings institutions, except savings banks authorized by Congress to use the word "national" as a part of their corporate name, are prohibited from using the word "national" as a portion of the name or title of such bank, corporation, firm, or partnership; and any violation of this prohibition committed after the third day of September, eighteen hundred and seventy-three, shall subject the party chargeable therewith to a penalty of fifty dollars for each day during which it is permitted or repeated."

A State bank does not violate this law by using, as part of its name, the word "international." 22 A. G. Op. 475. Nor is this provision violated by using the word "national" in the corporate name of a building and loan association. *Lomb v. Pioneer S. & L. Co.*, 106 Ala. 591, 671; see 20 A. G. Op. 673.

APPENDICES

APPENDIX A

CONSTITUTION OF THE AMERICAN BANKERS' ASSOCIATION

DECLARATION.

In order to promote the general welfare and usefulness of banks and banking institutions, and to secure uniformity of action, together with the practical benefits to be derived from personal acquaintance and from the discussion of subjects of importance to the banking and commercial interests of the country, and especially in order to secure the proper consideration of questions regarding the financial and commercial usages, customs and laws which affect the banking interests of the entire country, and for protection against loss by crime, we have to submit the following Constitution and By-Laws for "The American Bankers' Association":

CONSTITUTION.

ARTICLE I.

SEC. 1. This Association shall be called "The American Bankers' Association."

ARTICLE II.

SEC. 1. Any National or State Bank, Trust Company, Savings Bank or Banking Firm may become a member of this Association upon the payment of such annual dues as shall be provided by the By-Laws, and may send one delegate to the annual meetings of the Association; and any

member may be expelled from the Association upon a vote of two-thirds of those present at any regular meeting.

SEC. 2. Delegates shall be an officer or director or trustee of the institution they represent, or a member of a banking firm, or an individual doing business as a bank.

SEC. 3. Any State Association of Banks and Bankers may be represented at all Conventions of this Association by one delegate for every fifty members of such Association, and such delegate shall be entitled to all the privileges of the Convention. Any State Association having less than fifty members shall be entitled to one delegate, but other than this, no fractional part of fifty members shall entitle an Association to an additional delegate.

SEC. 4. Delegates shall vote in person; no voting by proxy shall be allowed. No delegate shall vote in more than one capacity, nor shall any State Association be entitled to more votes than it has delegates present at the meeting.

SEC. 5. All votes shall be *viva voce*, unless otherwise ordered; any delegate may demand a division of the house.

ARTICLE III.

SEC. 1. The administration of the affairs of the Association shall be vested in the President and First Vice-President of this Association, and one Vice-President for each State and Territory which may be represented in this Association, and in an Executive Council, who shall be elected at the annual meeting, and who shall serve until their successors are chosen or appointed. The Executive Council shall be composed of thirty members, divided into three classes, one-third of whom shall be elected annually; five members of the Executive Council shall be annually chosen by the delegates from the several State Associations of banks and bankers; the President and First Vice-President and ex-Presidents, if still members of the Association, shall also be members *ex-officio*; and no President or Vice-President nor retiring member of the Executive Council shall be eligible for re-election for the period of one year after the expiration of his term of office.

SEC. 2. Immediately after the first adjournment that occurs in the session of the Annual Convention, the delegations from each State and Territory shall meet, at which several meetings the respective Vice-Presidents of the States and Territories, if present, shall preside, and these meetings of representatives from the States and Territories shall each select a member, who shall, with others so selected, constitute and be a Committee on Nominations. The Committee may make its report at any subsequent session of the Convention, but its nominations shall not exclude the name of any person otherwise nominated in the Convention. The delegates from the several State Banks and Bankers' Associations shall assemble and meet apart after the first adjournment, and, in such manner as they may determine, shall nominate to the Convention five names for members of the Executive Council, who shall be members of this Association, provided that no State Association shall thus be represented by more than one member of the Executive Council. No delegate from any State Association shall, however, be eligible unless he is a member of the American Bankers' Association. The elections for President, First Vice-President and for five members of the Executive Council to be chosen by the Association shall be by ballot, unless otherwise ordered.

SEC. 3. Each Vice-President, other than the First Vice-President, shall have the supervision of such business of the Association, exclusive of its general business in charge of the Executive Council and other officers, as may pertain to the State or Territory in which he resides, and may call meetings therein relative to such business whenever he may deem the same necessary.

SEC. 4. The Executive Council shall meet immediately upon the adjournment of the annual Convention of the Association, and, a quorum being present, elect one of their number Chairman and appoint Standing Committees, a Secretary and a Treasurer, and such other employees of the Association as may be deemed proper, and the Council may, at their discretion, discharge the Secretary, Treasurer or other employees. The Executive Council shall have power

to fill vacancies that may occur in any of the offices of the Association and in the membership of the Council.

SEC. 5. The Executive Council shall take charge of the general business of the Association, receive communications, arrange for holding the annual Convention and other meetings, procure and arrange subjects for discussion in the order in which they may come before the Convention, provide for speakers and carry out the resolutions passed. They may appoint a *Standing Advisory Committee* of seven, including the President of the Association and Chairman of the Council. The attendance of seven members of the Council shall constitute a quorum for the transaction of business.

SEC. 6. Special meetings of the Executive Council may be called by request of five of its own members, giving two weeks' notice to the Secretary desiring him to call such special meeting.

SEC. 7. The Executive Council shall provide — first, for keeping the records of the proceedings of their own meetings, as well as that of the Association's annual or special meetings; second, they shall submit to each annual meeting a report, covering their own official acts as well as a statement of any new or unfinished business requiring attention; third, they shall make full statements of the financial condition of the Association; and, fourth, submit an estimate of the amount required to carry on the affairs of the Association according to their judgment of the business to be done, recommend means for raising money to carry out such plans as may be resolved upon by the Association and raise and disburse the money therefor.

SEC. 8. The Secretary shall make and have charge of the records of the Association. These records shall include the correspondence of the Executive Council and that of the Standing Protective Committee. He shall be held responsible for and charged with the safekeeping of the records of both the Executive Council and the Protective Committee. And it shall be his duty to send promptly to each member of the Association a synopsis of the reports received by him of attempted or accomplished crime against

any member of the Association. These records shall be the property of the Association and be held subject at all times to the order of the Executive Council.

SEC. 9. The Treasurer shall receive and account for all moneys belonging to the Association, and collect dues; but shall pay out moneys only upon vouchers countersigned and approved by the Secretary appointed by the Executive Council and by the President, or by the Chairman of the Executive Council.

SEC. 10. The Secretary and Treasurer shall each give to the American Bankers' Association a bond satisfactory in amount and form to the Executive Council.

ARTICLE IV.

SEC. 1. The Executive Council shall appoint a *Standing Protective Committee* of three persons, whose names shall not be made public. The said Committee shall control all actions looking to the detection, prosecution and punishment of persons attempting to cause or causing loss, by crime, to any member of the Association.

SEC. 2. The said Committee, when called upon for aid by any member of the Association through the Secretary, shall forthwith take such steps as it shall deem proper to arrest and prosecute the party charged with the crime. Provided, however, that no expense or liability shall be incurred beyond the amount of funds in the treasury especially appropriated for that purpose.

SEC. 3. The said Committee is prohibited from compromising or compounding with parties charged with crime, or with their agents or attorneys.

SEC. 4. All detective and legal expenses and costs incurred by the Protective Committee and other committees not exceeding the appropriations set apart for the use of these committees, respectively, shall be paid by the Treasurer only upon vouchers drawn by the Chairmen of the various committees, duly countersigned as provided for in Article III, Section 9, of this Constitution.

SEC. 5. All members of the Association, when called

upon by the Secretary in behalf of the Protective Committee for information or aid, shall promptly respond by giving all assistance in their power; and all members shall, at all times, notify the Secretary, who shall promptly notify the Committee, of any attempted or accomplished crime reported to him as likely to affect other members of the Association.

ARTICLE V.

SEC. 1. Annual conventions of the Association shall be held at such times and places as shall be determined by the Executive Council. Special meetings may be called by the Council if, in their opinion, circumstances require them, giving *two weeks'* notice of the time and place of meeting, together with the subject-matter of business to come before such special meeting. The Executive Council shall meet to arrange the order of business on the day preceding any general meeting of the Association.

ARTICLE VI.

SEC. 1. The expenses of the Executive Council of the Association, in carrying out the business to be done by it, shall be provided for by the annual dues of the members of the Association; provided, however, that the Executive Council shall have no authority to incur or contract on behalf of this Association any liability whatever beyond the amount of the annual dues and moneys especially collected. No expenses shall be incurred except for purposes designated in this Constitution.

ARTICLE VII.

SEC. 1. Resolutions or subjects for discussion (excepting those referring to points of order or matters of courtesy) must be submitted to the Executive Council in writing at least fifteen days before the annual Convention of the Association; but any person desiring to submit any resolution or business in open convention may do so upon a two-thirds vote of the delegates present, the resolution or

business may be referred to the Executive Council to report upon immediately; provided that this shall not apply to any proposed amendment of the Constitution.

ARTICLE VIII.

Sec. 1. Any one failing to pay within three months the membership dues shall be considered as having withdrawn from the Association, but may be reinstated upon application to the Secretary, and paying all dues in arrears, with the consent of the President or Chairman of the Executive Council.

ARTICLE IX.

Sec. 1. This Constitution may be amended at any annual meeting by a vote of two-thirds of the members present, notice of the proposed amendment having been submitted to the Secretary at least thirty days before the annual meeting, and the Secretary shall forward to every member of the Association a copy of such proposed amendment, at the same time the other notices are sent out, and shall submit it to the Executive Council, that they may arrange to bring it before the Convention under the regular order of business.

BY-LAWS.

1st. The annual dues to the Association shall become due and payable in advance September 1st of each year, which date shall be the commencement of the fiscal year of the Association. The annual Convention of each closing year shall be held at such time as the Executive Council may select; it being understood that absent members from such annual meeting shall not forfeit their membership nor the right to become members, provided they comply with the Constitution and By-Laws, and remit the amount of the dues to the Treasurer within at least three months after September 1st of each year.

2d. The annual dues of the members of this Association shall be \$10.00 for Banks and Trust Companies having an aggregate capital and surplus of less than \$100,000, private bankers and banking firms; \$20.00 for Banks and Trust Companies having an aggregate capital and surplus of \$100,000, and less than \$250,000; \$25.00 for Banks and Trust Companies having an aggregate capital and surplus of \$250,000, and less than \$500,000; \$30.00 for Banks and Trust Companies having a capital and surplus of \$500,000 and less than \$750,000; \$40.00 for Banks and Trust Companies having a capital and surplus of \$750,000 and below \$1,000,000; \$50.00 for Banks and Trust Companies having a capital and surplus of \$1,000,000 and below \$5,000,000; \$75.00 for Banks and Trust Companies having a capital and surplus of \$5,000,000 and over.

3d. In addition to the regular annual dues the Executive Council shall have authority to annually call for an additional sum, not exceeding the amount of the annual dues from each member, for the benefit of a protective fund, which fund shall be used for no other purpose than for defraying the cost of the apprehension and prosecution of the perpetrators of crime against the members of the Association, and the payments of rewards for their punishment.

4th. A section of the Association to be known as the Trust Company Section is hereby established, which shall meet annually in connection with the meeting of this Association.

(a) The scope of the section shall embrace matters of interest to trust companies in so far as such matters are distinct from banking. It may report to the Association, and affairs relating to trust companies may be referred to it.

(b) Its programme and proceedings may be published from time to time, together with the proceedings of this Association.

(c) All trust companies members of the Association who desire may enroll themselves as members of the section.

(d) The Executive Council of this Association shall have supervision over the section, and may make such provision for it as to such Council may seem wise.

5th. A section of the Association, to be known as the Savings Banks Section, is hereby established, which shall meet annually in connection with the meeting of this Association; its scope shall embrace all matters relating especially to savings banks, with a similar programme and proceedings as the Trust Companies Section, and it shall be under the supervision of the Executive Council.

RULE OF THE PROTECTIVE COMMITTEE OF THE AMERICAN BANKERS' ASSOCIATION.

"Upon receipt of notification by the President or Secretary of an attempted or successful perpetration of fraud upon a member of the Association, either by forgery, check-raising, robbery, or safe-breaking, which appears to be the work of professional criminals, accompanied by a full account of the offense, and, if possible, a description of the operators, the Committee will, if the case come within the category of those of which the Association can take cognizance, at once endeavor to apprehend the criminals by means of a detective agency or such other means as they may consider warranted. A case once committed to the Association, which results in the apprehension of the criminal, cannot be taken out of its hand, nor the offense condoned or compromised."

It is expected that every member will co-operate with the Committee and promptly report every offense coming under their notice, as well as by using all reasonable diligence in assisting in the arrest and conviction of the criminals.

The Association cannot take cognizance of petty larcenies, thefts by employees, amateur forgeries, or frauds committed

by others than what may be termed professional operators. It is against the latter class that the efforts of the Association will be directed, and it is hoped that the results will be effectual in breaking up of professional forgery, check-raising and bank robbery.

APPENDIX B

CONSTITUTION AND RULES OF THE NEW
YORK CLEARING HOUSE ASSOCIATION,
WITH AMENDMENTS, MAY, 1903

SEC. 1. The name of this Association shall be "THE NEW YORK CLEARING HOUSE ASSOCIATION."

SEC. 2. The objects of the Association shall be the effecting at one place of the daily exchanges between the several Associated Banks, and the payment at the same place of the balances resulting from such exchanges. But the Association shall be in no wise responsible in regard to such exchanges, nor in regard to the balances resulting therefrom, except so far as such balances shall be actually paid into the hands of the Manager. The responsibility of the Association is strictly limited to the faithful distribution by the Manager among the creditor Banks, for the time being, of the sums actually received by him; and should any loss occur whilst the said balances are in the custody of the Manager, they shall be borne and paid by the Associated Banks in the same proportion as the other expenses of the Clearing House, as hereinafter provided for.

SEC. 3. The Association at present consists of the following members:

Bank of New York,
Manhattan Company,
Merchants' Bank,
Mechanics' Bank,
Union Bank,
Bank of America,
Phenix Bank,
City Bank,
North River Bank,
Tradesmen's Bank,

Fulton Bank,
Chemical Bank,
Merchants' Exchange Bank,
National Bank,
Butchers' and Drovers' Bank,
Mechanics' and Traders' Bank,
Greenwich Bank,
Leather Manufacturers' Bank,
Seventh Ward Bank,
Bank of the State of New York,

American Exchange Bank,
Mechanics' Banking Association,
Bank of Commerce,
Bowery Bank,
Broadway Bank,
Ocean Bank,
Mercantile Bank,
Pacific Bank,
Bank of the Republic,
Chatham Bank,
People's Bank,
Bank of North America,
Hanover Bank,
Irving Bank,
Metropolitan Bank,
Citizens' Bank,

Knickerbocker Bank,
Grocers' Bank,
Empire City Bank,
Nassau Bank,
East River Bank,
Market Bank,
St. Nicholas Bank,
Shoe and Leather Bank,
Corn Exchange Bank,
Central Bank,
Continental Bank,
Bank of the Commonwealth,
Oriental Bank,
Marine Bank,
Atlantic Bank.

MEETINGS.

SEC. 4. Each Bank belonging to the Association shall be represented at all meetings thereof by one or more of its principal officers, and shall be entitled to one vote.

SEC. 5. A general meeting of the Association shall be holden at the Clearing House on the first Tuesday in October in each year, at one o'clock P. M. At every annual meeting a President shall be elected by ballot, to preside at that meeting and all subsequent meetings during the year. Whenever he shall be absent a Chairman *pro tem.* shall be appointed. At the same meeting a Secretary shall also be elected by ballot.

SEC. 6. Special meetings shall be called by the Clearing House Committee, whenever they may deem it expedient, or whenever they shall be thereto requested by any seven of the Associated Banks.

SEC. 7. At all meetings of the Association a quorum for the transaction of business shall consist of a majority of the whole number of Associated Banks.

RESOLUTION — *Adopted June 23d, 1857.*

Resolved, That a fine of three dollars be imposed upon every Bank not represented at roll call at each duly called meeting of the Association, without reasonable ex-

cuse. The fund created by such fines to be appropriated in such manner as may be directed by the President of the Association.

CLEARING HOUSE COMMITTEE.

Sec. 8. At every annual meeting a Standing Committee of five Bank Officers shall be elected by the majority and by ballot, to be called the Clearing House Committee, whose duty it shall be to procure from time to time a suitable room or rooms for the Clearing House; to provide proper books, stationery, furniture, fuel, and whatever else may be necessary for the convenient transaction of business thereat; to appoint a Manager annually, and such clerks as may be necessary; to establish rules and regulations to be observed at the Clearing House in cases not provided for in this Constitution, subject to the approval of the Association, and generally to supervise the Clearing House affairs. This Committee shall have charge of the funds belonging to the Association; shall draw on each Bank for its quota of the expenses, and shall, also, at the first meeting of the Association after their election, submit detailed estimates of the expenditures that will be required for the Clearing House during the current year.

AMENDMENT — *Adopted June 4th, 1884.*

Add to Section 8, as follows: The Clearing House Committee is also empowered, whenever it shall consider it for the interest of the Association, to examine any bank member of the Association, and to require from any member securities of such an amount and character as said Committee may deem sufficient for the protection of the balances resulting from the exchanges of the Clearing House.

AMENDMENT — *Adopted March 13th, 1899.*

Add to Section 8, as follows: The Clearing House Committee shall have power to establish rules and regulations

regarding collections outside of the City of New York, by members of the Association or banks or trust companies or others clearing through such members, and the rates to be charged for such collections, and also providing for enforcement of the same. The Committee may from time to time make any additions to, or changes in, such rules and regulations as it deems judicious. After any rule or regulation upon the subject has been once established, it shall not, however, be altered or rescinded until it has been in force at least three months, except by majority vote of the Clearing House Association.

(For Rules and Regulations under this Amendment, see page 215, *infra*.)

MANAGER AND CLERKS.

SEC. 9. The salary of the Manager shall always be fixed by the Association. The salaries of the clerks shall be fixed by the Clearing House Committee. The Manager shall give a bond, with sureties in the sum of ten thousand dollars, and each clerk in the sum of five thousand dollars, to be approved by said Committee.

SEC. 10. The Manager under control of the Clearing House Committee, shall have immediate charge of all business at the Clearing House, so far as relates to the manner in which it shall be transacted; and the clerks of the establishment, as well as the settling clerks and porters of the several Associated Banks, while at the Clearing House, shall be under his direction.

SEC. 11. The Clearing House Committee shall have power to remove the Manager or any of the clerks, whenever, in the opinion of the Committee, the interest of the Association shall require.

EXCHANGES AND BALANCES.

SEC. 12. The hour for making Exchanges at the Clearing House shall be 10 o'clock A. M., precisely. Between the hours of 12½ and 1½ o'clock, P. M., the debtor Banks shall

pay to the Manager at the Clearing House the balances against them, either in actual coin, United States Legal-tender notes, or in the certificates hereinafter mentioned, except fractional amounts. At 1½ o'clock, P. M., or as soon thereafter as the amounts can be made up and proved, the creditor Banks shall receive from the Manager, at the same place, the respective balances due to them, provided all the balances due from the debtor Banks shall have been paid. The Association, by a vote of three-fourths of those present, at a meeting called for that purpose, may change the hour for making the exchanges and the settlement of balances.

AMENDMENT — *Adopted October 6th, 1896.*

Resolved, That on and after the sixth day of October, 1896, all checks, drafts, notes, bills of exchange and other items sent through the exchanges by members of this Association, shall bear stamped or written receipt, in the following form :

<p style="text-align: center;">Received Payment Through New York Clearing House, (Date) Name of Bank (and No. if desired).</p>
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SEC. 13. Should any one of the Associated Banks fail to appear at the Clearing House at the proper hour prepared to pay the balance against it, the amount of that balance shall be immediately furnished to the Clearing House by the several Banks exchanging at that establishment with the defaulting Bank, in proportion to their respective balances against that Bank, resulting from the exchanges of the day, and the Manager shall make requisitions accordingly, so that the general settlement may be accomplished with as little delay as possible. The respective amounts so furnished the Clearing House on account of the defaulting Bank will, of course, constitute claims on the part of the

several responding Banks against that Bank; but as before stated, the Association shall in no wise be responsible therefor.

SEC. 14. Errors in the exchanges, and claims arising from the return of checks, or from any other cause, are to be adjusted directly between the Banks who are parties to them, and not through the Clearing House, the Association being in no way responsible in respect to them.

SEC. 15. Reclamations for errors and deficiencies in specie or United States legal-tender notes, received at the Clearing House, contained in bags or packages, sealed and marked in conformity with any rules established upon that subject by the Clearing House Committee, shall be made by *one o'clock p. m., on the following day*, by the receiving Bank directly against the Bank whose mark the sealed bag or package bears. *Notice of such error shall be sent to the Bank immediately upon discovery*, the Association not being responsible for the contents of such sealed bags or packages.

All checks, drafts, notes or other items in the exchanges, returned as "not good" or mis-sent, shall be returned the same day directly to the Bank from whom they were received,¹ AND THE SAID BANK SHALL IMMEDIATELY REFUND TO THE BANK RETURNING THE SAME THE AMOUNT WHICH IT HAD RECEIVED THROUGH THE CLEARING HOUSE FOR THE SAID CHECKS, DRAFTS, NOTES, OR OTHER ITEMS SO RETURNED TO IT, IN SPECIE OR LEGAL-TENDER NOTES. But, checks, drafts, notes, or other items to be returned for endorsement or informality may, after being certified by the Bank returning it, be returned through the exchanges the following morning, not exceeding \$5,000 in amount to any one bank. (For relations with United States Assistant Treasurer, see page 219, *infra*.)

AMENDMENT — *Adopted June 4th, 1884.*

Add to Section 15 as follows: "In case of the refusal or inability of any bank to promptly refund to the Bank presenting such checks, drafts or other items, returned as not

¹ Amendment adopted May 23d, 1866.

good, the Bank holding them may report to the Manager the amount of the same. And it shall be the Manager's duty, with the approval of the Clearing House Committee, to take from the settling sheets of both Banks the amount of such checks, drafts or other items so reported, and to readjust the Clearing House statement and declare the correct balance in conformity with the change so made, provided that such report shall be given to the Manager before one o'clock of the same day.

RESOLUTION — *Adopted June 4th, 1896.*

Resolved, That on and after the first day of July, 1896, members of this Association shall not send through the exchanges any checks, sight drafts, notes, bills of exchange or other items having thereon any qualified or restrictive endorsement, such as "for collection" or "for account of," unless all endorsements thereon are guaranteed by the Bank, member of the Association, sending such checks, drafts, notes, bills of exchange or other items.

Any such items sent in violation of the above requirements shall be returned directly to the member from whom they were received, and shall in all respects be subject to the regulations contained in Section 15 of the Constitution of the New York Clearing House Association.

Under this resolution, the Clearing House Committee, on February 18, 1904, made the following ruling:

Upon a question submitted to the Committee by a member, the Clearing House Committee expresses the opinion that endorsements upon checks, drafts or other items sent through the exchanges, in the words "Pay any Bank or Banker or order," and any similar endorsements, are "qualified or restrictive" endorsements within the meaning of the resolution adopted by the Clearing House Association on June 4, 1896, and that all prior endorsements upon items bearing such endorsements should be guaranteed by the Bank member sending them to the Clearing House.

In the opinion of its Committee, such endorsements do not indicate an absolute transfer of title, but a transfer for collection merely.

WEEKLY STATEMENTS.

SEC. 16. Every Bank, member of the Clearing House Association, shall furnish a weekly statement of its condition to the Manager, for publication, showing the average amount of —

- 1st. *Loans and Discounts.*
- 2d. *Specie.*
- 3d. *Legal-Tender Notes.*
- 4th. *Circulation.*
- 5th. *Deposits.*

(For Weekly Statements of Non-Member Banks and Trust Companies, see page 222, *infra*.)

DEPOSITORY FOR ASSOCIATED BANKS.

SEC. 17. The Associated Banks may, from time to time, appoint one of their own number, or the Assistant Treasurer of the United States at New York, to be a depository to receive in special trust, such coin or United States legal-tender notes, as any of the Associated Banks may choose to send to it for safekeeping. The Depository shall issue certificates in exchange for such coin or United States legal-tender notes, in proper form, and for convenient amounts. Such certificates shall be negotiable only among the Associated Banks, and shall be received by them in payment of balances at the Clearing House. Such special deposits of coin or United States legal-tender notes are to be entirely voluntary — each Bank being left perfectly free to make them or not, at its own discretion. The coin or notes thus placed on special deposit are to be the absolute property of such of the Associated Banks as shall, from time to time, be the holders of the certificates, and are to be held by the Depository subject to withdrawal on the presentation of the proper certificates at any time during banking hours.

RESOLUTION — *Adopted October 2d, 1860.*

Resolved, Any member of the Clearing House Association who shall pay or deliver to any party, other than a member of the said Association, the certificates of deposit of the Clearing House Depository, shall be subject to a fine of \$100 (one hundred dollars).

RESOLUTION — *Adopted October 3d, 1893.*

Resolved, That the Clearing House Committee are hereby authorized to make such arrangements and provisions as may be necessary, to receive and store gold coin and issue Clearing House Certificates for the same, under such rules and regulations as may be prescribed by said Committee. (For Rules, see page 223, *infra*.)

RESOLUTION — *Adopted December 22d, 1893.*

Resolved, That any loss arising from the receipt and storage of gold coin, and the issue of certificates therefor, under the authority given the Clearing House Committee October 3d, 1893, shall be borne by the Banks comprising the New York Clearing House Association, *pro rata* of Capital and Surplus; and this Resolution shall be ratified by the Boards of the respective Banks, members of the Association, and a certified copy of such consent delivered to the Chairman of the Clearing House Committee.

NEW MEMBERS.

SEC. 18. New members may be admitted into the Association at any meeting thereof. Such new members shall signify their assent to this Constitution in the same manner as the original members, and shall pay an admission fee according to their respective capitals, as follows:

Banks ¹ whose capital does not exceed	\$5,000,000	shall pay . . .	\$5,000
“ “ “ exceeds	\$5,000,000	“ “ . . .	\$7,500

¹ Amendment adopted October 3d, 1893.

Any Bank, member of the Clearing House Association, increasing its capital, shall pay, in addition to the above, a sum to correspond with these rates.

But no new members shall be admitted, except by a vote of three-fourths of those present—such vote to be taken by ballot. Provided, however, that it shall be competent, by a vote of three-fourths of those present, to impose such conditions as the Association may deem expedient at the time of such admission.

COMMITTEE ON ADMISSIONS.

SEC. 19. A Standing Committee of five Bank Officers shall be appointed at every annual meeting, to whom all applications for admission into the Association shall be referred for examination.

RESOLUTION — *Adopted April 26th, 1882.*

Resolved, That under Section 19 of the Constitution of this Association, the Clearing House Committee may refer all applications for admission to the Committee on Admissions, instead of calling a meeting of the Association for that purpose.

AMENDMENT — *Adopted February 11th, 1903.*

Resolved, That Section 19 of the Constitution of the New York Clearing House Association, as amended April 26th, 1882, be further amended by the adoption of the following resolution:

Resolved, That the Clearing House Committee shall not refer to the Committee on Admissions under this section, any application for admission into the Association by any Bank, unless the amount of its unimpaired capital and surplus shall equal at least the amount of \$500,000.

EXPULSION.

SEC. 20. For cause deemed sufficient by the Associated Banks, at any meeting thereof, any Bank may be expelled from the Association, and debarred from all the privileges of the Clearing House, provided a majority of the whole number of Associated Banks vote in favor thereof.

CONFERENCE COMMITTEE.

SEC. 21. A Standing Committee of five Officers of Banks, shall be elected at every annual meeting, who, acting in concurrence with the Clearing House Committee, shall have power, in case of extreme emergency, to suspend any Bank from the privileges of the Clearing House until the pleasure of the Association thereupon shall be ascertained. But no such suspension shall take place unless a majority, at least, of each of these two Committees shall be present at the ordering thereof, nor unless the vote be unanimous. In case of such suspension the Clearing House Committee shall forthwith call a general meeting of the Association to take the matter into consideration.

WITHDRAWAL.

SEC. 22. Any member of the Association may withdraw therefrom at pleasure — first paying its due proportion of all expenses incurred, and signifying its intention to withdraw to the Clearing House Committee.

EXPENSES.

SEC. 23. The expenses of the Clearing House, not including the expense of printing for the several Banks (which last mentioned expense shall be apportioned equally), shall be borne and paid as follows: ¹ *Each bank shall be assessed*

¹ Amendment adopted October 29th, 1875.

Two Hundred Dollars, and the balance necessary after that amount, pro rata, according to the average amount which it shall have sent to the Clearing House for the preceding year.

COMMITTEE OF ARBITRATION.

SEC. 24. At every annual meeting a Standing Committee of five Bank Officers shall be appointed, to be called the Committee of Arbitration, whose duty it shall be to hear and determine all disputes that may be submitted to them by both parties thereto; any member of the Association being one. Such Committee shall record a brief abstract of each case referred to them, together with their decision therein, in a book to be provided for that purpose, which book shall be kept at the Clearing House, open to the inspection of all members of the Association. The first Committee shall be appointed immediately upon the adoption of this amendment, and shall serve until the next annual meeting.

CLEARING FOR NON-MEMBERS.

SEC. 25. Whenever exchanges shall have been made at the Clearing House, by previous arrangement between members of the Association through one of their own number and Banks in the city and vicinity who are not members, the receiving Bank at the Clearing House shall in no case discontinue the arrangement without giving previous notice — which notice shall not take effect until the exchanges of the morning following the receipt of such notice shall have been completed.

RESOLUTION — *Adopted February 13th, 1865.*

Resolved, That no member of the Clearing House Association shall be allowed to make the exchanges for, or redeem the notes or checks of any other Bank or Banks, not members of said Association, without first giving notice

over the signature of one of its officers of the fact of such redemption, nor shall such redemption be discontinued but upon notice in the manner prescribed by Section 25 of the Constitution.

AMENDMENT — *Adopted April 26th, 1865.*

Whenever any member of the Association shall send through the Clearing House the exchanges of any Bank or Banks in the city or vicinity, who are not members, such sending shall, *ipso facto*, and without other notice, constitute said member the agent for said Bank or Banks at the Clearing House; and said member shall be liable in the premises the same as for its own transactions, and its liability in all such cases shall continue until after the completion of the exchanges of the morning next following the receipt of notice of discontinuance of any such agency.

RESOLUTION — *Adopted May 23d, 1866.*

Resolved, That the liabilities of Banks in the Clearing House doing business for Banks in the vicinity are, under the amendment to the Constitution, passed April 26th, 1865, the same as for their own transactions.

AMENDMENT — *Adopted October 14th, 1890.*

Resolved, That on and after January 1st, 1891, this Association permits its members to make such exchanges only after the consent of the Clearing House Committee shall have been obtained and the Banks or parties shall have obligated themselves to pay to the Clearing House Association an annual payment of \$200, and shall also consent to the same examinations as are now required of its members, provided, however, that nothing contained in this Resolution shall be construed as making such Banks or parties members of the Association.

AMENDMENT — *Adopted December 21st, 1896.*

Resolved, That the amendment to the Constitution adopted October 14th, 1890, assessing Banks and others

not members of this Association and clearing through members, \$200 annually, be amended by increasing such amount to \$500 annually; this amendment to take effect on and after January 1st, 1897.

AMENDMENT — *Adopted February 11th, 1903.*

Resolved, That the amendments to Section 25, of the Constitution of the New York Clearing House Association as to the making of exchanges through the Clearing House, for non-members adopted October 14, 1890, and December 21, 1896, be supplemented by the following additional amendment to take effect immediately; namely, The New York Clearing House Association permits its members after March 1, 1903, to make exchanges through the Clearing House for Banks or other Institutions not members of the Association, only upon the following terms:

1. No member of the Association shall make exchanges through the Clearing House for any Bank or other Institution whose exchanges have not heretofore been so made through a member, unless the same shall have been actually doing business for at least one year, nor until the making of such exchanges by a member shall have been approved by the Clearing House Committee after an examination of such Bank or Institution made by the Clearing House Committee, or by some other Committee of the Association duly appointed for that purpose.

The consent of the Clearing House Committee shall also be necessary to the transfer of the making of the exchanges for a non-member by one member to another member.

2. On and after January 1, 1904, every non-member Bank or Institution now or hereafter sending its exchanges through a member of the Association shall pay to the Association the amount of \$1,000 annually in advance.

3. Every non-member Bank or Institution now or hereafter sending its exchanges through a member of the Association shall submit, whenever required by the Clearing House Committee, to the same examinations as are now required of members of the Association.

4. Every non-member Bank or Institution now or hereafter sending its exchanges through a member of the Association, shall furnish to the Manager of the Clearing House, at the close of business on each Friday, a weekly statement of its condition in such form as shall be prescribed by the Clearing House Committee from time to time as to any class of non-members. (For Forms, see p. 222, *infra*.)

5. Every non-member Institution (not a Bank required by law to maintain a specified reserve) now or hereafter sending its exchanges through a member of the Association, shall on and after June 1, 1903, keep in its vaults a cash reserve equal to five per centum of its deposits; and on and after February 1, 1904, such cash reserve shall be at least seven and one-half per centum of its deposits, and on and after June 1, 1904, such cash reserve shall be such percentage as shall from time to time be fixed by the Clearing House Committee, but not less than ten nor more than fifteen per centum of its deposits. The reserve hereby required shall be an average reserve as against the average deposits as shown upon its weekly statements.

If any non-member Bank or Institution or party now or hereafter sending its exchanges through a member of the Association shall fail to comply with any of the foregoing requirements applicable to such non-member, or upon examination shall be found in an unsatisfactory condition, the Clearing House Committee may suspend any privilege previously given to members of the Association to make exchanges or redemptions for such non-member; such suspension to take effect upon the completion of the exchanges of the morning following the giving of notice of such suspension by the Manager to the members of the Association.

Nothing contained in Section 25 of the Constitution or in the amendments thereto, shall be construed as making a Bank, Institution or other party sending its exchanges through a member, in any sense or to any extent a member of this Association.

ADOPTION OF CONSTITUTION.

SEC. 26. This Constitution, when agreed to by the Association at any general meeting thereof by a majority of votes, shall be submitted to the respective Boards of Directors of the several banks herein named as members of the Association for their adoption. When adopted by a majority of the whole number of Banks it shall be deemed and taken to be in full force and operation. Adoption shall be signified by the signature of the proper officer of the Bank to two copies hereof, one to be kept by the Chairman of the Clearing House Committee and the other by the Secretary of the Association. A copy of the vote or resolution of the Board authorizing such signature shall be deposited with the Secretary. Such Banks as shall not adopt this Constitution within two months from the time it is agreed to in general meeting, as above mentioned, shall at the expiration of such two months, cease to be members of the Association; provided the Constitution shall then be in operation.

SEC. 27. Amendments of this Constitution may be made at any meeting of the Association by the vote of a majority of all the members thereof, notice of the proposed amendments having been given at a previous meeting.

NOMINATING COMMITTEE.

RESOLUTIONS — *Adopted September 22d, 1871.*

1st. There shall be chosen yearly at the annual election a committee of five members, to be called "The Nominating Committee," whose duty it shall be to present to the Association at each annual election names of candidates for President and Secretary of the Association, and for members of the three committees on the following basis: The President and Secretary shall be eligible for two successive years; and after an interval of one year, shall be again eligible in like manner.

2d. There shall be selected every year, two, at least, new members on each of the committees (having still three old members), and those who have been longest on the committee shall go off first. If all have been on the same length of time, then two shall go off by lot; and after an interval of one year, such members shall be deemed again eligible.

SUNDRY AMENDMENTS.

RESOLUTION — *Adopted April 8th, 1872.*

Resolved, That the Clearing House Committee be and is hereby directed, whenever it appears, in its judgment, that legal tender notes have been withdrawn from use through the agency of any Bank member of the Association, to make an immediate examination of the Bank in question, and should there appear to be complicity on the part of the Bank or its officials, to suspend said Bank from the Clearing House until action of the Association shall be taken thereon.

AMENDMENT — *Adopted April 25th, 1876.*

If vacancies occur in any of the Committees of this Association, the remaining members of the Committee shall have power to fill the same.

AMENDMENT — *Adopted October 2d, 1888.*

The President of the Association shall be *ex-officio* member of all Committees, except the Committee on Nominations.

AMENDMENT — *Adopted December 8th, 1892.*

Wherever the words "Chairman of the Association" occur, substitute in place thereof, "President of the Association."

MEMBERS OF THE ASSOCIATION

MAY 1ST, 1903.

No.	No.
1. Bank of New York, N. B. A.,	53. Importers' & Traders' Nat'l Bk,
2. Bank of the Manhattan Co.,	54. National Park Bank,
3. Merchants' National Bank,	59. East River National Bank,
4. Mechanics' National Bank,	61. Fourth National Bank,
6. Bank of America,	62. Central National Bank,
7. Phenix National Bank,	63. Second National Bank,
8. National City Bank,	65. First National Bank,
12. Chemical National Bank,	67. N. Y. Nat'l Exchange Bank,
13. Merchants' Exchange Nat'l Bk,	70. Bowery Bank,
14. Gallatin National Bank,	71. N. Y. County National Bank,
15. Nat'l Butchers' & Drovers' B'k,	72. German-American Bank,
16. Mechanics' & Traders' Bank,	74. Chase National Bank,
17. Greenwich Bank,	75. Assistant Treas. U. S. at N. Y.,
18. Leather Manu'f's' Nat'l Bank,	76. Fifth Avenue Bank,
21. American Exchange Nat'l B'k,	77. German Exchange Bank,
23. National Bank of Commerce,	78. Germania Bank,
27. Mercantile National Bank	80. Lincoln National Bank,
28. Pacific Bank,	81. Garfield National Bank,
30. Chatham National Bank,	82. Fifth National Bank,
31. People's Bank,	83. Bank of the Metropolis,
32. National Bank of North Am.,	84. West Side Bank,
33. Hanover National Bank,	85. Seaboard National Bank,
34. Irving National Bank,	88. First National Bank, Brooklyn,
36. National Citizens' Bank,	91. Liberty National Bank,
40. Nassau Bank,	92. N. Y. Produce Exchange B'k,
42. Market and Fulton Nat'l B'k,	93. New Amsterdam National B'k,
44. National Shoe & Leather B'k,	94. Astor National Bank,
45. Corn Exchange Bank,	95. Western Nat'l B'k of the U. S.
49. Oriental Bank,	

RULES OF THE CLEARING HOUSE
ASSOCIATIONRELATING TO RETURN OF CHECKS, RECLAMATIONS
FOR ERRORS, AND MONEY PACKAGES.

1st. — RETURN OF CHECKS, DRAFTS, ETC., for informality, not good, mis-sent, guarantee of endorsement, or for any other cause, should be made before THREE O'CLOCK, of the same day.

2d. — RECLAMATION FOR ERRORS of any kind, in packages of notes or BAGS OF GOLD received from the Clearing House, in settlement of Balances, should be made before ONE O'CLOCK, on the following day.

3d. — IN NO CASE SHOULD CHECKS, DRAFTS, ETC., BE RETURNED THROUGH THE EXCHANGES, except for informality or endorsement, and then, in each case, they should be certified, and the amount limited to \$5,000 to each Bank.

4th. — IN CASE OF A MISSING ITEM in an exchange, the claim should be made at once, by returning the entire exchange, with a memorandum stating the nature of the claim.

5th. — PACKAGES CONTAINING Legal Tender Notes and United States Bearer Gold Certificates, to be used in payment of Balances at the Clearing House, should be made up in even amounts of \$1,000, \$2,000, \$3,000, \$4,000, \$5,000, \$10,000, \$20,000, \$50,000, and \$100,000 each, and all Notes of a smaller denomination than \$500 should be put in packages of not over \$5,000. All packages should be sealed and distinctly marked with the name of the Bank, the amount, date and kind of money.

6th. — DEBIT BANKS should avoid, as much as possible, postponing the payment of balances to a late hour, as it sometimes causes serious delay in making up and paying the Creditor Banks, at the Clearing House.

SCALE OF FINES

IN FORCE AT THE CLEARING HOUSE.

Forty-five minutes from the hour of commencing, viz., 10 o'clock A. M., will be allowed for a Proof.

For all errors, remaining undiscovered at 11.15 A. M., the fines will be doubled, and at 12 M., quadrupled.

1st. — All errors on the Credit side of the Settling Clerk's statement (i. e., in the AMOUNT BROUGHT) whether of footing or entry, and all errors causing disagreement between the credit entries, the check tickets, and the exchange slips — each	\$3 00
2d. — Errors in making the Debit (i. e., AMOUNT RECEIVED) entries — each	2 00
3d. — ERRORS IN THE TICKETS reported to the Clearing House, causing disagreement between the balances and aggregate — each	2 00
4th. — ERRORS IN FOOTING the amount received	1 00
5th. — DISORDERLY CONDUCT of Settling or Delivery Clerk, at the Clearing House; or DISREGARD OF THE MANAGER'S INSTRUCTIONS — each offence	2 00
6th. — Settling or Delivery Clerk FAILING TO ATTEND PUNCTUALLY, with statements and tickets complete, at the morning exchanges — each	2 00
7th. — Debtor Banks, FAILING TO APPEAR TO PAY their balances before 1.30 P. M.	3 00
8th. — Errors in DELIVERY OR RECEIPT of exchanges — each	1 00
9th. — FOR EACH ITEM MIS-SENT, payable to the returning bank, (but in no case more than five dollars for items returned by any bank to any one bank, on the same day)	1 00

Extract from the Constitution of the Clearing House:

SECTION 10. The Manager, under control of the Clearing House Committee, shall have immediate charge of all business at the Clearing House so far as relates to the manner in which it shall be transacted; and the clerks of the establishment, as well as the Settling Clerks and Porters of the several Associated Banks, while at the Clearing House, shall be under his direction.

RULES AND REGULATIONS

REGARDING COLLECTIONS OUTSIDE OF THE CITY OF
NEW YORK.

As authorized by AMENDMENT—*Adopted, March 13th, 1899.* (See page 197, *infra*.)

Pursuant to authority conferred upon it by the Constitution of the New York Clearing House Association, the Clearing House Committee of said Association establishes the following rules and regulations regarding collections outside of the City of New York, by members of the Association, or banks, trust companies, or others clearing through such members, and the rates to be charged for such collections, and also regarding enforcement of the provisions hereof:

SEC. 1. These rules and regulations shall apply to all members of the Association, and to all banks, trust companies or others clearing through such members. The parties to which the same so apply are hereinafter described as collecting banks.

SEC. 2. For items collected for the accounts of, or in dealings with the Governments¹ of the United States, the State of New York, or the City of New York, and for items payable in the cities of Boston, Mass., Providence, R. I., Albany, N. Y., Troy, N. Y., Jersey City, N. J., Bayonne, N. J., Hoboken, N. J., Newark, N. J., Philadelphia, Penn., Baltimore, Md., the charge shall in all cases be² discretionary with the collecting bank and the same shall not be governed by the provisions of these rules and regulations.

SEC. 3. For³ all items from whomsoever received (except on those points declared discretionary in Section 2), payable at points in Connecticut, Delaware, District of Columbia, Indiana, Illinois, Kentucky, Maine, Maryland,

¹ See Ruling D, page 219, *infra*.

² See Ruling B, page 218, *infra*.

³ See Ruling C, page 219, *infra*.

Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin, the collecting banks shall charge not less than one-tenth of one per cent. ($\frac{1}{10}\%$) of the amount of the items respectively.

SEC. 4. For all¹ items from whomsoever received payable at points in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Indian Territory, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, Wyoming, and Canada, the collecting banks shall charge not less than one-quarter of one per centum ($\frac{1}{4}\%$) of the amount of the items respectively.

SEC. 5.² In case the charge upon any item at the rates above specified does not equal ten cents (10 c.), the collecting bank shall charge not less than that sum; but all items received from any one person at the same time and payable at the same place may be added together and treated as one item for the purpose of fixing the amount chargeable.

SEC. 6. *The charges herein specified shall in all cases be collected at the time of deposit or not later than the tenth day of the following calendar month. No collecting bank shall, directly or indirectly, allow any abatement, rebate, or return for or on account of such charges or make in any form, whether of interest on balances or otherwise, any compensation therefor.*

SEC. 7. Every collecting bank, trust company or other corporation not a member of the Association, but clearing through a member thereof, shall forthwith adopt by its Board of Directors a resolution in the following terms, and file a certified copy thereof with the Association as evidence as therein specified:

"Whereas, This corporation has acquired the privilege of clearing and making exchange of its checks through the

¹ See Ruling C, page 219, *infra*.

² See Ruling A, page 218, *infra*.

New York Clearing House Association, and is subject to its rules and regulations, Now, therefore, *Be it Resolved*, that this corporation hereby in all respects assents to and agrees to be bound by and to comply with all rules and regulations regarding collections outside of the City of New York, which may be established pursuant to the Constitution of said Association, and that the President of this corporation is hereby instructed to file a certified copy of this resolution with the Clearing House Association as evidence of such assent and agreement on the part of this corporation."

SEC. 8. In case any member of the Association shall learn that these rules and regulations have been violated by any of the collecting banks, it shall immediately report the facts to the Chairman of the Clearing House Committee, or in his absence, to the Manager of the Association. Upon receiving information from any source that there has been a violation of the same, said Chairman, or in his absence said Manager shall call a meeting of the Committee. The Committee shall investigate the facts and determine whether a formal hearing is necessary. In case the Committee so concludes, it shall instruct the Manager to formulate charges and present them to the Committee. A copy of the charges, together with written notice of the time and place fixed for hearing regarding the same, shall be served upon the collecting bank charged with such violation, which shall have the right at the hearing to introduce such relevant evidence and submit such argument as it may desire. The Committee shall hear whatever relevant evidence may be offered by any person and whatever arguments may be submitted and shall determine whether the charges are sustained. In case it reaches the conclusion that they are, the Committee shall call a special meeting of the Association and report thereto the facts with its conclusions. *If the report of the Committee is approved by the Association, the collecting bank charged with such violation shall pay to the Association the sum of five thousand dollars, and in case of a second violation of these rules*

and regulations, any collecting bank may also in the discretion of the Association be excluded from using its privileges directly or indirectly, and, if it is a member, expelled from the Association.

Resolved, that the foregoing rules and regulations are hereby established and adopted and shall take effect upon the third day of April, 1899.

RULINGS AND INTERPRETATIONS OF SOME OF THE FOREGOING RULES AND REGULATIONS.

A — See Sec. 5, page 216, *supra*.

(*Circular Letter — March 30th, 1899.*)

The attention of the Clearing House Committee having been called to the fact that different interpretations have been made of the meaning of the words, "at the same place," in Section 5 of the Rules regarding collections, as formulated by this Committee, and it not having been intended that the word "place" in the said Section should have the same meaning as the word "point" used in the preceding Sections 3 and 4; Therefore, this Committee declares that the said Section 5 shall be read so as to permit all items payable within the States, Territories and Districts enumerated in either Sections 3 or 4 to be added together and treated as one item when "received from any one person at the same time."

B — See Sec. 2, page 215, *supra*.

(*Circular Letter — August 16th, 1899.*)

Items on banks not located at a discretionary point, stamped collectible through the Clearing House at a discretionary point, are subject to the rules and charges must be made thereon. In order to permit the waiving of charges on such items, they must be made payable at a bank located at a discretionary point.

C—See Secs. 3 and 4, pages 215 and 216, *supra*.

(*Circular Letter—January 24th, 1901.*)

In consequence of frequent inquiries made at this office, the Clearing House Committee beg to notify all banks and trust companies making exchanges through the Clearing House, that items upon which appear the words, "Payable in New York exchange," or "With New York exchange," etc., are subject to the collection charges established by the Clearing House Association, March 13th, 1899.

D—See Sec. 2, page 215, *supra*.

(*Chairman of the Clearing House Committee—December 5th, 1901.*)

In SEC. 2 the provision making the collection charge discretionary, "for items collected for the accounts of, or, in dealings with the Governments of the United States, the State of New York, or the City of New York," has relation only to items *deposited by* the representatives of the various governments mentioned, and not to checks, warrants, etc., *issued by* them, and deposited by the bank's other customers.

REGULATIONS AFFECTING RELATIONS WITH THE U. S. ASSISTANT TREASURER AT NEW YORK.

(*Circular Letter—June 30th, 1896.*)

Referring to the resolution¹ adopted by the Association June 4th, 1896, regarding endorsements, it is understood that the omission on the part of any bank to guarantee endorsements of the character described in that resolution, shall not exempt such bank from its present liability to the Assistant Treasurer of the United States, under the circular of July 29th, 1893, and the resolutions of October 13th, 1893, authorized by the Clearing House Association.

The Circular of July 29th, 1893, provides :

¹ See Resolution, page 201, *supra*.

"That all checks which are to be returned for whatever cause, must be presented at the office of the Assistant Treasurer before two o'clock P. M. each day excepting Saturdays and other half-holidays, on which days any such checks must be presented before one o'clock P. M."

The resolutions of October 13th, 1893, are as follows:

Resolved, That all credit balances due the Assistant Treasurer of the United States at New York, arising through the making of exchanges by that officer with the associated banks, through the Clearing House, shall be paid in funds current at the Clearing House, excepting Clearing House Certificates.

Resolved, That the Assistant Treasurer be permitted to return through the Clearing House all checks and drafts received by him through that channel, whose return is required by reason of any informality.

Resolved, That in case of the receipt by the Assistant Treasurer of a "not good" check or checks, sent him in error through the exchanges, it is understood that he will notify the sending bank before three o'clock P. M. on the day of its receipt, by telephone or other formal notice, immediately. Said bank to take up check immediately upon receipt of notice.

FORM OF RESOLUTION AND STAMP REQUIRED BY THE ASSISTANT TREASURER IN ACCEPTING STAMP FINAL INDORSEMENTS ON DISBURSING OFFICERS' CHECKS.

(See Circular Letter of Clearing House Committee following.)

At a regular meeting of the Board of Directors of the

of the City of
day of
assenting,

held on the
, a quorum being present and

It was Resolved, That this Bank adopt the stamp described below for the indorsement of *Disbursing Officers' Checks*, drawn upon the Assistant Treasurer of the United

States at New York, and presented for payment through the New York Clearing House only; said stamp to be in lieu of a written endorsement of an officer or attorney of this bank; and that the impression of said stamped endorsement on any such check shall be as full and complete a discharge for the amount thereof, as though it bore the written endorsement of an officer or attorney of this bank:

Received Payment
Through the New York Clearing House,
THE BLANK BANK OF NEW YORK,
John Jones, Cashier.
January 27th, 1903.

I,

Cashier of the

and Secretary of the Board of Directors, do hereby certify that the above resolution after being by me read, and fully explained to the said board, at a meeting held at its Banking House, on the date first above mentioned, was thereupon passed.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said bank this
day of _____ A. D., one thousand nine
hundred and _____

(Signed.)

Cashier and Secretary of the Board of Directors.

[SEAL OF THE BANK.]

This resolution must be filed with the Assistant Treasurer U. S. at New York.

(See letter of instruction on page following.)

CIRCULAR LETTER OF INSTRUCTION ACCOMPANYING PRECEDING FORM.

New York, January 27th, 1893.

DEAR SIR:

The Clearing House Committee have the pleasure to inform you that the Assistant Treasurer U. S. at New York will accept stamped final endorsements on Pension Agents' and other Disbursing Officers' checks payable through the Clearing House only where such checks bear the *written endorsement* of the Payee.

As the acceptance of stamped endorsements will be confined exclusively to the class of checks above named, all Treasury Drafts, Post Office Warrants and Checks for Interest and Gold and Currency Certificates, must be separately listed and placed in envelopes by themselves.

A copy of resolution to be adopted by your Board of Directors and to be filed with the Assistant Treasurer, and form of stamp to be used is herewith enclosed.

Before stamped endorsements can be accepted by the Assistant Treasurer the above requirements must be observed.

By order

E. H. PERKINS, JR., *Chairman.*WILLIAM SHERER, *Manager.*

WEEKLY STATEMENT OF NON-MEMBERS.

*Extract from Amendment to Sec. 25 of the Constitution,
Adopted February 11th, 1903.*

SEC. 4. Every non-member Bank or Institution now or hereafter sending its exchanges through a member of the Association shall furnish to the Manager of the Clearing House, at the close of business on each Friday, a weekly statement of its condition in such form as shall be prescribed by the Clearing House Committee from time to time as to any class of non-members.

FORM FOR BANKS.

Average Amount of Loans and Discounts and Investments (not Real Estate)			
Average Amount of Specie			
Average Amount of Legal-Tender Notes & Bank Notes			
Average Amount on Deposit with Clearing House Agent.			
Average Amount on Deposit with other New York City Banks and Trust Companies			
Average Amount of Deposits			
Average Amount of Circulation			
Correct			

FORM FOR TRUST COMPANIES.

Capital (as per latest statement to Banking Dept.)			
Surplus Fund and Undivided Profits (as per latest statement to Banking Dept.)			
Average Amount of Loans, Bills Purchased and Investments (not Real Estate)			
Average Amount of Specie.			
Average Amount of Legal-Tender Notes & Bank Notes			
Average Amount on Deposit with other New York City Banks and Trust Companies			
Average Amount of Deposits			
Correct			

*Extract from Resolution of Clearing House Committee,
November 3d, 1899.*

Hereafter all statements of averages, submitted to the Clearing House by members and non-members, must be verified and signed by an officer.

RULES OF THE CLEARING HOUSE GOLD DEPOSITORY.

1st. — Banks desiring to deposit gold coin for certificates must notify the Manager, who will arrange as to the amount and time of deposit.

2d. — Upon notice from the Manager the bank must de-

posit the gold at the Clearing House, and take his receipt therefor.

3d. — Only bags containing \$5,000 standard weight and one denomination of coin in each will be received. Each bag must bear a tag stating the name of the depositing bank, the amount and the date of deposit.

4th. — Claims for deficiencies will be made by the Manager after examination of the gold, and must be satisfied promptly.

5th. — After the gold has been counted certificates will be issued on the surrender of the receipt given by the Manager.

6th. — No exchange of coin received for deposit will be made.

7th. — As the rules of the Association require the attendance of a member of the Clearing House Committee when gold is withdrawn from the vaults, notice of intention to withdraw must be given to the Manager by *three o'clock P. M. of the preceding day*.

8th. — Claims against coin withdrawn from the depositary must be made before 3 P. M. of the day following its withdrawal.

As the receipt of gold and the issue of certificates were determined upon in order to save the expense and risk of loss caused by paying coin at the Clearing House, it is expected and desired that the certificates be used to pay balances, in lieu of coin, as far as possible.

APPENDIX C
CONSTITUTION (AS AMENDED APRIL, 1904)
AND RULES OF THE BOSTON CLEAR-
ING HOUSE ASSOCIATION

CONSTITUTION.

ARTICLE 1.

The name of this Association shall be the **Boston Clearing House Association.**

ARTICLE 2.

The objects of this Association are:

SEC. 1. The effecting at one place of the daily exchanges between the several Associated Banks and the payment at the same place of the balances resulting from such exchanges;

SEC. 2. The collection of checks and other items drawn upon and payable by banks, bankers and trust companies throughout the New England States, and the distribution of the proceeds thereof to the banks, members of this Association, presenting such items for collection;

SEC. 3. The furtherance or safeguarding of the common interests of the Associated Banks, both as between themselves, and as affecting banks in other localities having established relations with this Association.

ARTICLE 3.

SEC. 1. This Association consists at present of the following members:

The National Union Bank,
" Old Boston National Bank,
" State National Bank,
" New England National Bank,
" Atlantic National Bank,
" Merchants National Bank,
" Second National Bank,
" National Shawmut Bank,
" National Exchange Bank,
" National Bank of Commerce,
" Faneuil Hall National Bank,
" Webster & Atlas Nat'l Bank,
" Eliot National Bank,

The Freemans National Bank,
" Boylston National Bank,
" National Bank of Redemption,
" First National Bank,
" National Bank of the Republic,
" Mt. Vernon National Bank,
" National Security Bank,
" Colonial National Bank,
" Fourth National Bank,
" Metropolitan National Bank,
" Winthrop National Bank,
" Mechanics National Bank,
" Commercial National Bank.

SEC. 2. New members may be admitted to this Association, on the recommendation of the Clearing House Committee, by the affirmative vote of three-fourths of all the members of this Association, at a meeting called for the purpose—such vote to be taken by ballot; and each new member, thus elected, shall, before admission, pay an admission fee of five thousand dollars (\$5,000), and assent and subscribe to this Constitution in the manner hereinafter provided.

SEC. 3. No new member shall be admitted to this Association whose capital, paid up and intact, is less than \$500,000.

SEC. 4. Any member of this Association going into liquidation shall *ipso facto* cease to be a member. But should a member reorganize its business and change its name without reduction of capital, the new organization thus formed may be elected to membership and admitted without the payment of an admission fee.

SEC. 5. The Assistant Treasurer of the United States, at Boston, may upon application be admitted to the privileges of the Clearing House without the payment of any admission fee, but he shall have no vote or voice in its management.

SEC. 6. Any member may withdraw from this Association by giving to the Secretary in writing three months' notice of such intention, and first paying its due proportion of all expenses for the current year.

Sec. 7. For any cause deemed sufficient by the members of this Association, at any meeting thereof, any Bank may be expelled from the Association and debarred from all the privileges of the Clearing House, provided a majority of all the members shall vote in favor of such expulsion.

ARTICLE 4.

This Association shall in no wise be responsible in regard to the daily exchanges between the several Associated Banks, or in regard to the balances resulting therefrom, except in so far as such balances shall be actually paid into the hands of the Manager; or for the solvency of the banking institutions on which checks and other items entrusted to it for collection may be drawn; or for the solvency of whatever collecting agents may be employed.

The responsibility of this Association is strictly limited to the faithful payment to and distribution among the members by the Manager and other persons employed by this Association at its office in Boston of the money and checks actually received by them under this Constitution; and should any loss arise from his or their failure or neglect in this respect it shall be borne as follows:—

If it shall occur in the effecting of exchanges between the Associated Banks and the payment of the balances resulting therefrom, it shall be borne and paid by the Associated Banks *pro rata* according to the average daily amounts which each bank shall have sent to the Clearing House during the preceding fiscal year.

If it shall occur in the collection of checks and other items, drawn upon and payable by banks, bankers or trust companies other than members of this Association or those clearing through such members, or in the distribution of the proceeds thereof to the members to whom they belong, it shall be borne and paid by the Associated Banks *pro rata* according to the average daily amounts of New England checks outside of Boston which each bank shall have sent to the Clearing House during the preceding fiscal year.

This Association shall be in no way responsible for any losses in the collection of checks or other items deposited with this Association for collection arising from the insolvency of the banking institutions on which such checks or other items are drawn, or arising from the insolvency or neglect of any collection agent employed by this Association or from the mistakes or errors of such collecting agent's employees, or from any cause whatsoever other than the failure or neglect of the Manager or other persons employed by this Association at its office in Boston, as above set forth; but such losses, as between the Association and the bank depositing for collection such checks or items, shall be borne by the bank.

ARTICLE 5.

SEC. 1. At all meetings of this Association each Bank belonging thereto shall be represented by an officer or Director, as each Bank may determine, and shall be entitled to one vote. Any member failing to be represented at roll call at any duly called meeting of the Association shall pay a fine of ten dollars.

SEC. 2. The annual meeting of the Association shall be held at the Clearing House on the second Monday in April of each year at half past ten o'clock A.M. At this meeting a President and a Secretary of the Association shall be chosen by ballot, who shall hold their offices for one year and until others are chosen in their stead. There shall also be chosen at each annual meeting a nominating committee of three persons, who shall, at least two weeks before the annual meeting next following their appointment, present to each bank belonging to the Association a list of nominees for officers for the succeeding year. There shall also be chosen by ballot at each annual meeting a standing committee of five presidents or other directors of Banks, members of this Association, to be called the Clearing House Committee, who shall hold office for one year and until others are chosen in their stead, but no Bank

shall have more than one representative on this Committee at any one time.

SEC. 3. Special meetings of this Association shall be called by the Clearing House Committee whenever they may deem it expedient, or whenever they shall be requested in writing to do so by five of the Associated Banks. All meetings shall be called by leaving a written or printed notice of the same with the several Associated Banks, at least twenty-four hours before the date of the meeting.

SEC. 4. At all meetings a quorum for the transaction of business shall consist of one-third of the whole number of Associated Banks.

ARTICLE 6.

SEC. 1. The President shall preside at all meetings of the Association. Should he be absent from any meeting, a President *pro tem.* shall be appointed.

SEC. 2. The Secretary shall keep a record of the proceedings of all meetings of the Association. Should he be absent from any meeting, a Secretary *pro tem.* shall be appointed.

ARTICLE 7.

SEC. 1. It shall be the duty of the Clearing House Committee to procure suitable rooms for the Clearing House; to provide proper books, stationery, furniture, fuel, and whatever else may be necessary for the convenient transaction of business thereat; to appoint a Manager and such other clerks or officers as may be necessary; to establish rules and regulations to be observed at the Clearing House in cases not specially provided for in this Constitution; such appointments, and such rules and regulations to be subject to the approval of the Association; and generally to supervise the whole business and affairs of the Clearing House.

They shall also have charge of the funds of the Association, and shall draw on each Bank for its quota of the expenses. They shall at every Annual Meeting present a full and correct account of the expenditures of the then

past year. Any vacancies which may occur in the Committee during the year shall be filled at the next meeting of the Association which takes place after such vacancy occurs.

SEC. 2. The Clearing House Committee shall have power to remove the Manager or any of the Clerks, whenever, in their opinion, the interests of the Association shall require it.

SEC. 3. It shall be the duty of the Clearing House Committee to investigate promptly cases of apparent infraction of the laws under which the Banks are organized, by any member of the Association; and the Committee shall have power, in case of urgent necessity, to suspend any Bank from the privileges of the Clearing House until the pleasure of the Association thereon shall be ascertained, provided such shall be the opinion of at least four members of the Committee; and, in case of such suspension, the Committee shall forthwith call a meeting of the Association to take the matter into consideration.

The Clearing House Committee is also empowered, whenever it shall consider it for the interests of the Association, to examine any Bank belonging to the Association, and to require from said Bank securities of such an amount and character as said Committee may deem sufficient for the protection of the balances resulting from the exchanges at the Clearing House.

SEC. 4. It shall be the duty of the Clearing House Committee to hear and determine all disputes between members of this Association which shall be submitted to them by the parties thereto. The Committee shall record a brief abstract of each case thus referred to them, with their decision on the same, in a book provided for that purpose, kept at the Clearing House and open to the inspection of the members of this Association.

SEC. 5. The Clearing House Committee shall establish and announce a scale of fines for errors, disorderly conduct or other irregularities, the same to be enforced and collected by the Manager.

SEC. 6. The Clearing House Committee shall direct that

the Clearing House be closed for a holiday upon written application signed by three-fourths of the Associated Banks.

ARTICLE 8.

SEC. 1. The salary of the Manager shall always be fixed by the Association, and the salaries of the Clerks and Cashiers by the Clearing House Committee. The Manager shall give bonds, with sureties, in the sum of not less than twenty thousand dollars; and the Cashiers shall give bonds, with sureties, in the sum of not less than ten thousand dollars each, all of which bonds shall be approved by the Clearing House Committee.

SEC. 2. The Manager, under the control of the Clearing House Committee, shall have the immediate charge of all the business at the Clearing House, so far as relates to the manner in which the business shall be transacted; and the Settling Clerks and Messengers of the several Banks, as well as the Clerks belonging to the House, shall, while at the Clearing House, be under his direction. The Manager shall immediately report to the Clearing House Committee any apparent irregularity coming to his notice in the dealings of any Bank belonging to the Association or of any bank, banker or trust company having dealings with the Clearing House, and receive the instructions of the Committee in regard thereto.

ARTICLE 9.

SEC. 1. The hour for making the exchanges at the Clearing House shall be ten o'clock A. M. each day. At quarter-past twelve o'clock P. M., except on Saturday, and then at half-past eleven o'clock A. M., the Debtor Banks shall pay to the Manager, at the Clearing House, the balances due from them respectively, either in United States gold coin, gold certificates or legal-tender notes, or in such certificates as shall be authorized by the Clearing House Association, excepting sums less than one thousand dollars, which may be paid in national bank bills.

At one o'clock P. M. each day but Saturday and then at twelve o'clock M., the Creditor Banks shall receive from the Manager, at the same place, the balances due to them respectively, provided all the balances due from the Debtor Banks shall then have been paid to him.

SEC. 2. Should any Bank or Banks fail to pay to the Manager the balance or balances due at the Clearing House at the proper hour, the Manager shall cause a new settlement to be made, and new balances to be ascertained, by eliminating from the settling-sheet of each and every Bank all of the amounts charged thereon to the defaulting Bank or Banks, and all of the amounts credited thereon to the defaulting Bank or Banks, and also all of the amounts, both debit and credit, on the settling-sheet or settling-sheets of the defaulting Bank or Banks. The new balances, as thus ascertained, shall be the balances to be settled as provided in section one; and in case any Bank or Banks shall have paid to the Manager the balance or balances as at first ascertained, such Bank or Banks shall at once make adjustment with the Manager.

Immediately after such new settlement shall have been made, each and every Bank shall deliver to the Manager all of the checks and other items which were received from the defaulting Bank or Banks on the day of default, or in lieu thereof the money therefor, which checks or other items, or the money, as the case may be, the Manager shall tender to the defaulting Bank or Banks that such checks and other items were received from (such tender to be a sufficient notice of the new settlement), and demand and be entitled to receive *all* of the checks and other items, except those which shall have been previously delivered to him, which the defaulting Bank or Banks had received through the Clearing House on the day of default. The checks and other items received by the Manager shall then be returned by him at once to the respective Banks from which they originally came.

If any defaulting Bank or Banks shall fail or refuse to return said checks and items when demanded as above, the other Banks may notify their depositors and customers,

from whom said checks and other items were received, of the fact of the non-payment and detention of such checks and items, which notification shall be the equivalent to the return of such checks and items to the depositors of the same, and the amounts thereof may be charged to their respective accounts; it being understood that they, the said Banks, receive checks and items payable by other Banks, for collection, as agents only, and do not hold themselves liable for any loss or damage which may accrue through the default of any Bank or Banks upon which said checks and other items may be drawn.

SEC. 3. All checks, drafts, notes, bills of exchange and other items, presented for payment through the Clearing House, shall bear the stamped or written endorsement of the Bank presenting the same, in the following form:—

RECEIVED PAYMENT

Through the Boston Clearing House,

(Date)

NAME OF BANK (and No. if desired).

and the Bank using such stamp thereby makes itself responsible for all items so stamped by it, the same as if its endorsement had been written thereon. Members of the Clearing House Association presenting checks and other items stamped for them and in their name by their customers or by other banks or bankers not members of this Association shall assume the same responsibility for all such items so stamped as they do for checks and other items stamped by themselves.

SEC. 4. Errors in the exchanges and claims arising from the return of checks, or other cause, are to be adjusted directly between the Banks which are parties therein, and not through the Clearing House.

SEC. 5. Reclamations for errors and deficiencies in coin received at the Clearing House contained in bags or other packages, sealed and marked in conformity with rules which may be established by the Committee, are to be made by the receiving Banks directly against the Banks

whose marks they bear,—the Clearing House not being responsible for the contents of such sealed bags or packages,—and such reclamations shall be made not later than two o'clock P. M. on the day next following receipt.

SEC. 6. All checks, drafts, notes or other items sent through the Clearing House and found not good, mis-sent, lacking endorsement or otherwise irregular, shall be returned directly to the Bank from which they were received, and this Bank shall immediately refund to the Bank returning the same, in specie or legal-tender notes, the amount received through the Clearing House for said items thus returned to it.

Except on Saturdays, all such returned items shall be delivered not later than one o'clock P. M.; and on Saturdays not later than twelve o'clock, noon.

In case of the refusal or inability of any Bank or Banks to refund promptly to the Bank or Banks presenting such checks, drafts or other items returned as not good, the Bank or Banks holding them may report to the Manager the amount of the same; and provided that such report shall be given to the Manager by twelve o'clock of the same day, it shall be the Manager's duty, under the direction of the Clearing House Committee, to take from the settling-sheets of all of the Banks concerned the amount of such checks, drafts, or other items so reported, to re-adjust the Clearing House statement and declare the correct balances and enforce a settlement in conformity with the change so made. And should any Bank or Banks fail to pay the balance or balances as ascertained by such re-adjustment, the Manager shall still further re-adjust the Clearing House statement, and enforce a settlement, as provided in Article 9, section 2.

SEC. 7. New England checks not redeemable through the Boston Clearing House may be deposited with the Manager for collection at such hours and under such regulations as shall be ordered from time to time by the Clearing House Committee, and the proceeds of such items when collected shall be distributed through the regular

morning settlements in such manner and at such times as may be prescribed by the Clearing House Committee.

SEC. 8. For the purpose of collecting New England items and distributing the funds received in payment thereof, the Clearing House itself may take part in the morning settlements as No. 100, if so ordered by the Clearing House Committee; and whenever checks which are not good are charged against any member of the Association by the Clearing House, such checks shall be returned to the Manager of the Clearing House as soon as it shall be found they are not good, and except on Saturdays, all such returned items shall be delivered not later than one o'clock, P. M., and on Saturdays not later than twelve o'clock, noon; and the Manager shall immediately notify all members of the Association in payment of whose collections such checks shall have been received, and shall reimburse the Bank returning the checks not good by his draft upon the Clearing House to be collected through the exchanges of the following day, and at the same time shall charge against each of said members its respective proportion of the amount of such checks returned not good.

ARTICLE 10.

SEC. 1. No member of this Association shall make exchanges and settlements at the Clearing House as agent for any Bank or other corporation which is not a member, until it shall have obtained the written assent of the Clearing House Committee to do so; and thereafter any member of this Association making such exchanges and settlements shall be liable therefor and in regard thereto in the same manner as it is liable for its own exchanges and settlements, until at least twenty-four hours after the receipt by the Clearing House Committee of notice in writing of the discontinuance of such agency; *provided*, however, that any member of this Association shall have the right to return in the manner as provided in Article 9, Section 6,—

a. Checks drawn by any party or parties upon any Bank

or other corporation, for which such member is making exchanges and settlements, which are not good upon the books of such Bank or other corporation.

b. Checks (and other items) drawn on, or checks drawn by, or other obligations of any such Bank or other corporation, the aggregate of which exceeds the amount to the credit of such Bank or corporation on the books of such member of this Association.

SEC. 2. Any Bank or other corporation outside of the Clearing House, whose settlements are made through the Clearing House by another Bank, member of this Association, shall pay such sums annually as may be demanded by the Clearing House Committee.

ARTICLE 11.

The expenses of the Clearing House, not including the expense of printing, which shall be apportioned equally, nor the expense of collecting New England items outside of Boston, provided for elsewhere in this section, shall be borne and paid as follows:

Each Bank shall pay one hundred and twenty-five dollars (\$125) annually, and the remainder of the annual expenses beyond the amount so raised shall be assessed upon the several members of the Association, *pro rata*, according to the average daily amounts which each Bank shall have sent to the Clearing House during the preceding year.

All additional expenses incurred in the collection of items outside of Boston shall be borne and paid as follows:—

Each Bank availing itself of this collecting agency shall pay an assessment of one hundred dollars (\$100) yearly, in advance. All expenses above the amount thus received shall be divided among the Banks assessed as above, *pro rata*, according to the average daily amounts of New England checks outside of Boston which each Bank shall have sent to the Clearing House during the preceding year, excepting the expense of printing which shall be apportioned equally, and excepting further that any special

charges for exchange or otherwise shall be paid, *pro rata*, according to the respective amounts, by the Banks owning checks upon which such charges are made. All question of such charges shall be determined by the Manager of the Clearing House, subject to the revision of the Clearing House Committee.

ARTICLE 12.

The Clearing House Association shall have power to establish rules and regulations regarding collections by members of the Association or banks or trust companies or others clearing through such members, and the rates to be charged for such collections, and also to provide for the enforcement of the same. The Association may from time to time make any additions to or changes in such rules and regulations as it deems judicious. Any rule or regulation upon the subject can be established only by a vote of a majority of all the members of the Association, and when once established it shall not be altered until it has been in force at least three months, and then only by a majority vote of all the members of the Association.

ARTICLE 13.

Assent to these Articles of Association shall be made by the subscription thereto, in duplicate, of the Presidents of the respective Banks thereto expressly authorized or of such other Directors as may be specially appointed for that purpose by any of the Banks; and by such assent the respective Banks, which thereby become members of the Association, shall (and do hereby) agree to conform in all respects to the requirements of the several Articles of this Constitution; and of the two copies thus signed one copy shall be kept by the Chairman of the Clearing House Committee, and the other by the Secretary of the Association.

ARTICLE 14.

These Articles of Association may be amended at any meeting of the Association, by a vote of a majority of all the members, notice in writing of the proposed amendments having been given at a previous meeting, and lodged with the Secretary.

RULES ADOPTED BY THE BOSTON CLEARING HOUSE ASSOCIATION

MONEY PACKAGES.

(a) All gold paid in at the Clearing House, in payment of balances, must be put up in strong canvas bags, each containing \$5,000, all coins contained in any one bag to be full weight and of one denomination, the bags to be securely fastened with a seal (bearing the name of the member putting up such package), in such manner that in the opinion of the Manager of the Clearing House the fastenings can not be sufficiently released to allow of the removal of any of the contents without mutilating the seal. Every such package must have a suitable label or tag attached, bearing the name of the sealing member, the amount of the contents, denomination, date of sealing, and signature of the person or persons sealing the same.

(b) All packages containing legal tender notes or United States gold certificates, for use in payment of balances at the Clearing House, must be made up in even amounts of \$1,000, \$2,000, \$3,000, \$4,000, \$5,000, \$10,000, \$20,000, \$50,000 or \$100,000 each. Notes of smaller denominations than \$500 must be put up in packages containing notes of but one denomination and not more than one hundred notes each.

All packages must be distinctly marked with the name of the bank, the date and the amount of money.

FINES.

To the end that order may be maintained at the Clearing House, and that the business transacted there may be accomplished with as little delay as possible, the following fines are established:

SEC. 1. DISORDERLY CONDUCT. For disorderly conduct of any clerk or messenger at the Clearing House, or disregard of the Manager's instructions, for each offence . \$4

SEC. 2. TARDINESS. (1) *City Department.*

(a) For failure to attend punctually at the hour for making the exchanges:

For the first five minutes or part thereof	\$3
From five to ten minutes late	10
Over ten minutes late	25

(b) For failure to pay debit balances at the appointed hour:

For the first five minutes or part thereof	\$3
From five to fifteen minutes late	10
Over fifteen minutes late	25

(2) *Foreign Department.*

(a) For failure to attend punctually at the hours designated for depositing checks \$2

(b) For failure to deposit credit ticket with the Manager on Saturdays by half-past one o'clock P. M., and on other days by half-past three o'clock P. M. \$4

The Manager may, at his discretion, refuse the checks of any bank, whether for city or country clearing, if presented more than *fifteen minutes late*.

SEC. 3. ERRORS. (1) *City Department.*

(a) For all errors in settling clerk's statement or tickets, whether of footing or entry, on debit or credit side, not reported to the Manager within *thirty minutes* from the time of beginning \$2

(b) For all other errors 2

N. B. — Thirty minutes will be allowed for the morning settlement, and for each additional fifteen minutes detention, \$2 will be added to the fine.

(2) *Foreign Department.*

- (a) For any error in the amount of the credit ticket . . . \$4
- (b) For each slip or check ticket incomplete or incorrectly filled in \$1

SEC. 4. MIS-SENT ITEMS.

For each item mis-sent in the city clearing, fine payable to *the returning bank*, (but in no case more than five dollars for items returned by any bank to a single bank on the same day,) \$1

RULES AND REGULATIONS REGARDING COLLECTIONS OUTSIDE THE CITY OF BOSTON

(IN FORCE AFTER JULY 1, 1900.)

SEC. 1. These rules and regulations shall apply to all members of the Association, and to all banks or trust companies or others clearing through such members. The parties to which the same so apply are hereinafter described as collecting banks.

SEC. 2. For ALL ITEMS *collected for account of* the governments of the United States, the State of Massachusetts, or the city of Boston, for New England *checks* collectible *at par* through the Boston Clearing House, and for ITEMS payable in the cities of New York, Providence, Albany, Troy, Jersey City, Newark, Hoboken, Bayonne, Philadelphia and Baltimore, the charges shall in all cases be discretionary with the collecting bank, and shall not be governed by the provisions of these rules and regulations.

SEC. 3. For ALL ITEMS payable at any point in New England, excepting items on the city of Providence, R. I., and checks on those banking institutions which pay checks

on themselves sent through the Clearing House by remitting therefor *promptly* on receipt thereof, *without charge*, checks on some member of the Boston or New York Clearing House, or upon some banking institution clearing through some such member, the collecting bank shall charge not less than one-tenth of one per centum of the amount of the items respectively, and in no case less than ten cents upon any one item, but all such items received from any one depositor or correspondent on the same day may be added together and treated as one item for the purpose of fixing the amount to be charged.

SEC. 4. For ALL ITEMS received, (except on the points declared discretionary in Section 2,) payable at points in Delaware, District of Columbia, Indiana, Illinois, Iowa, Kentucky, Maryland, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, Wisconsin, and Canada, the collecting bank shall charge not less than one-tenth of one per centum of the amount of the items respectively, and in no case less than ten cents upon any one item; but all items described in this section received from any one depositor or correspondent on the same day may be added together and treated as one item for the purpose of fixing the amount to be charged.

SEC. 5. For ALL ITEMS payable at points in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Indian Territory, Kansas, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington and Wyoming, the collecting bank shall charge not less than one-quarter of one per centum of the amount of the items respectively, and in no case less than ten cents upon any one item; but all items described in this section received from any one depositor or correspondent on the same day may be added together and treated as one item for the purpose of fixing the amount to be charged.

SEC. 6. The charges herein specified are in all cases to

be collected at the time of deposit or not later than the tenth day of the following calendar month. No collecting bank shall directly or indirectly allow any abatement, rebate or return for or on account of such charges, or make in any form any compensation therefor.

SEC. 7. In case any member of the Association shall learn that these rules and regulations have been violated by any of the collecting banks, it shall immediately report the facts to the Chairman of the Clearing House Committee, or in his absence to the Manager of the Clearing House. Upon receiving information from any source that there has been a violation of the same, said Chairman, or in his absence said Manager, shall call a meeting of the Committee. The Committee shall investigate the facts, and determine whether a formal hearing is necessary. In case the Committee so concludes, it shall instruct the Manager to formulate charges and present them to the Committee. A copy of the charges, together with written notice of the time and place fixed for hearing regarding the same, shall be served upon the collecting bank charged with such violation, which shall have the right at any hearing to introduce such relevant evidence and submit such argument as it may desire. The Committee shall hear whatever relevant evidence may be offered by any person and whatever arguments may be submitted, and shall determine whether the charges are sustained. In case it reaches the conclusion that they are, the Committee shall call a special meeting of the Association and report thereto the facts with its conclusions. If the report of the Committee is approved by the Association, the collecting bank charged with such violation shall pay to the Association the sum of one thousand dollars; and in case of a second violation of these rules and regulations any collecting bank may also, in the discretion of the Association, be excluded from using its privileges directly or indirectly, and, if it is a member, expelled from the Association.

RESOLUTIONS OF THE BOSTON CLEARING
HOUSE ASSOCIATION

(a) *In the matter of Qualified or Restrictive Endorsements.*

(ADOPTED JUNE 12, 1896.)

On and after the first day of July, 1896, members of this Association shall not send through the exchanges any checks, sight drafts, notes, bills of exchange, or other items having thereon any qualified or restrictive endorsement, such as "for collection" or "for account of," unless *all* endorsements thereon are guaranteed by the Bank, member of this Association, sending such checks, drafts, notes, bills of exchange, or other items.

Any such items sent in violation of the above requirements shall be returned directly to the members from whom they were received, and shall in all respects be subject to the regulations contained in Section 13 of the Constitution of the Boston Clearing House Association. (Article 9 of revision of 1904.)

(b) *In the matter of checks drawn "Payable in Boston or New York Exchange."*

(ADOPTED JUNE 6, 1901.)

Checks or Drafts drawn on Banks or Banking Institutions in New England stamped, "Payable in Boston or New York Exchange" or some similar phrase, shall not be received on deposit or for collection by the members of this Association or any institution clearing through such a member.

(c) *In the matter of stamping Fraudulent Notes.*

(ADOPTED APRIL 13, 1903.)

The following provisions, being those of the Act of Congress of June 30, 1876 (part of Section 3583 of the United States Compiled Statutes of 1901), viz.: —

That all United States officers charged with the receipt or disbursement of public moneys, and all officers of national banks, shall stamp or write in plain letters the word "counterfeit," "altered" or "worthless," upon all fraudulent notes issued in the form of, and intended to circulate as money, which shall be presented at their places of business; and if such officers shall wrongly stamp any genuine note of the United States, or of the national banks, they shall, upon presentation, redeem such notes at the face value thereof —

are hereby constituted a rule to be strictly observed by all members of this Association and all banks and bankers clearing through them.

OPINIONS OF THE CLEARING HOUSE COMMITTEE,

COVERING EXCHANGE CHARGES UNDER RULE OF
JULY 1, 1900.

(VOTE OF JULY 17, 1900.)

(1) In the case of items written "With exchange," or an equivalent phrase, the customary charge should be made, but should the collecting bank remit or credit the face of the draft plus the exchange, the amount of the latter may then be rebated.

(2) Transactions in exchange on all points, between banks, members of the Clearing House, or banks or trust companies clearing through any such member, may be discretionary.

(VOTE OF MAY 10, 1900.)

(3) The rules of the Clearing House governing such charges apply to notes and drafts bought and discounted by a bank as well as to those received for collection.

THE ASSISTANT TREASURER OF THE UNITED STATES AT BOSTON AND THE CLEARING HOUSE

From Agreement between the Assistant Treasurer of the United States at Boston and the Clearing House Committee.

The Assistant Treasurer will return, through the Clearing House, all checks and drafts received by him through that source, the return of which is required by reason of any informality.

Checks charged the Assistant Treasurer through the Clearing House, which are not good, shall be taken up immediately by the sending bank on notification by the Assistant Treasurer. Such notice shall be given the sending bank before 2.30 o'clock P. M. on the day of receipt, except on Saturday, when it shall be made before one o'clock P. M.

All checks which are to be returned to the Assistant Treasurer for whatever cause, must be presented before 2 o'clock P. M. each day, except on Saturday, when presentation must be made before 12 M.

It is understood and agreed that the omission on the part of any bank to guarantee endorsements shall not exempt such bank from its present liability to the Assistant Treasurer of the United States at Boston.

APPENDIX D

ARTICLES OF ASSOCIATION OF THE CHICAGO CLEARING HOUSE ASSOCIATION, 1901

The undersigned Banks in the City of Chicago agree upon the following Articles of Association :

SEC. 1. The name of the Association shall be the **CHICAGO CLEARING HOUSE ASSOCIATION.**

SEC. 2. The objects of the Association are the effecting at one place of the daily exchanges between the several associated banks, and the payment at the same place of the balances resulting from such exchanges, and to establish rules and regulations in matters of common interest arising from, or affecting relations with banks in other localities, and the fostering of sound and conservative methods of banking.

SEC. 3. Application for membership shall be made to the Clearing House Committee, who shall examine the affairs of the applicant, and upon a favorable report from that Committee such applicant may be admitted a member of this Association on receiving the affirmative vote by ballot of three-fourths of the members of said Association, paying the admission fee and certifying assent to the Articles of Association in the same manner as the original members. Should any member reorganize its business and change its name without any reduction of capital, the new organization so formed may be elected to membership in this Association without the payment of any additional admission fee, and without change of place or Clearing House number. All

members of the Clearing House Association as heretofore existing shall be entitled to membership in this Association without the payment of an admission fee, but no new member shall be admitted, except Banks having their principal office located in the city of Chicago, organized under the laws of the United States or of the State of Illinois, and having done business thereunder, with their subscribed capital stock fully paid in for a period of at least six months prior to application for membership, and no new members shall be admitted except Banks having a paid-in capital of at least \$500,000, which shall be kept intact during such membership. The Assistant Treasurer of the United States, located at Chicago, may upon application be admitted to the privileges of the Clearing House without the payment of any admission fee, but he shall not have any voice in its management.

Any member of the Association may withdraw therefrom at pleasure — first paying its due proportion of all expenses incurred, up to and including the quarter of the year in which such withdrawal takes place, and by signifying to the Clearing House Committee its intention to withdraw.

All Banks hereafter becoming members of this Association shall pay an admission fee of one thousand dollars (\$1,000), in addition to their proportion of the dues and expenses for the remainder of the year, based upon the amount of their exchanges for the three calendar months immediately preceding their admission, except as provided in this Section.

SEC. 4. This Association shall be in no wise responsible in regard to the exchanges, nor in regard to the balances resulting therefrom, except so far as such balances shall be actually paid into the hands of the Manager. The responsibility of the Association is strictly limited to the faithful distribution by the Manager among the creditor Banks, for the time being, of the sums actually received by him; and should any loss occur while the said balances are in the custody of the Manager, it shall be borne and paid by the associated members *pro rata*, according to their daily average of the exchanges sent to the Clearing House

for the three calendar months immediately preceding the time of such loss.

SEC. 5. The officers of the Association shall consist of a President and Vice-President, who shall be elected from among the officers of the members of the Association, and shall hold their offices until their successors are chosen and qualified; and a Manager, who shall be appointed by the Association.

SEC. 6. The President, and in his absence, the Vice-President, shall preside at all the meetings of the Association; he shall call meetings of the Association whenever, in his opinion, the interests of the Association may require it, or whenever requested to do so by the Clearing House Committee, or in writing, by any five members of the Association.

SEC. 7. The Manager shall, under the control of the Clearing House Committee, have immediate charge of all business at the Clearing House so far as it relates to the manner in which it shall be transacted. He shall have the supervision of the settling clerks and messengers sent to the Clearing House by members of the Association, who, while at the Clearing House, shall be under his control. He shall act as Treasurer and Secretary of the Association. As Treasurer he shall have charge of the funds belonging to the Association, and pay out the same on the order of the Clearing House Committee, and keep a correct account of all moneys received and paid out on account of the Association, and shall submit a detailed statement of the same at the annual meeting, or whenever requested by the Clearing House Committee. As Secretary, he shall keep correct minutes of the proceedings of the Association in a book provided for that purpose. His salary shall be fixed by the Association, and he shall give a bond, in the sum of not less than twenty thousand dollars (\$20,000) to be approved by the Clearing House Committee. He shall report to the Clearing House Committee any violation of the Articles of the Association, or other irregularities on the part of any member of the Association, so far as the same shall come to his knowledge. He shall hold his

office until the next annual meeting of the Association or until his successor is appointed, unless suspended by the Clearing House Committee, or suspended or removed by the Association.

SEC. 8. The annual meeting of the Association shall be held at 3.30 P. M., on the third Tuesday in January of each year, at which meeting any business pertaining to the Association may be transacted, and the President and Vice-President and Clearing House Committee shall be elected by ballot, and a majority of all present shall determine the result.

At all meetings of the Association a quorum for the transaction of business shall consist of a majority of the whole number of the associated members.

SEC. 9. Special meetings shall be called by the President whenever he may deem it necessary, or whenever requested by the Clearing House Committee, or in writing by five members of the Association.

SEC. 10. Each member of the Association shall be represented at all meetings thereof by one or more duly authorized persons, and shall be entitled to one vote, and any member failing to be so represented within ten minutes of the time for which the meeting has been called shall pay a fine of five dollars.

SEC. 11. At the first annual meeting after these Articles of Association shall become operative the Association shall elect by ballot a standing committee of five, to be called the Clearing House Committee, who shall be official representatives of the banks—members of this Association—and their terms of office shall expire at the first annual meeting of the Association next ensuing after their election, or at such times as their successors are elected. It shall be the duty of the Clearing House Committee to procure a suitable room or rooms for the use of the Clearing House, to provide all necessary articles for the convenient transaction of business thereat; to appoint such clerks as may be necessary; to establish rules and regulations to be observed at the Clearing House in cases not provided for in these articles, subject to the approval of the Association, and generally to supervise the Clearing House affairs.

This committee shall determine the assessment of each member for its quota of expenses, in accordance with the requirements of these Articles of Association, and the Treasurer shall collect the same. All bills shall be paid by checks, signed by the Treasurer and countersigned by a member of the Clearing House Committee. This committee shall also, at the first annual meeting of the Association after its election, submit detailed estimates for the expenditures that will be required for the Clearing House during the current year. It shall hear and determine all disputes between members of the Association that shall be submitted to it by the parties thereto. Such committee shall record a brief abstract of each case referred to it, with its decision on the same, in a book provided for that purpose, which book shall be kept at the Clearing House, open to the inspection of the members of the Association.

Vacancies occurring in the offices or committees shall be filled by the Association, one week's notice to be given of the election. The Clearing House Committee shall have power to suspend the Manager or any clerk, whenever in its opinion the interests of the Association shall require it, and, in the event of a suspension, shall report the same immediately to the Association.

It shall make examination of the affairs of any member of the Association, when in its opinion advisable; it shall have power in case of extreme emergency (to be determined by the committee), to suspend any member from the privileges of the Clearing House until the pleasure of the Association can be ascertained; but no such examination or suspension shall take place unless a majority of the committee shall be present at the ordering thereof, nor unless the vote be unanimous. If any member of the committee is connected with a bank or firm which it is proposed to examine or suspend, he shall not in such case act with said committee, but the President shall act as a member of the committee in his place. In the case of suspension, the Clearing House Committee shall forthwith call a meeting of the Association, to take the matter into consideration.

It shall establish a scale of fines for errors, disorderly

conduct or other irregularities, the same to be enforced and collected by the Manager.

SEC. 12. For cause deemed sufficient by the Association, at any meeting, any member may be expelled or suspended from the privileges of the Clearing House, provided three-fourths of the members of the Association vote by roll call in favor thereof.

SEC. 13. Except on Saturdays, the hour for making exchanges at the Clearing House shall be eleven (11) o'clock A. M. Between the hours of twelve (12) and twelve-thirty (12.30) P. M., the Debtor members shall pay to the Manager of the Clearing House balances against them in such funds, and in the manner provided in these Articles of Association. Between the hours of twelve-thirty (12.30) P. M. and twelve-forty-five (12.45) o'clock P. M. the Creditor members shall receive from the Manager, at the same place, the respective balances due to them, provided the balances due from the Debtor members shall then have been paid.

On Saturdays, the hour for making exchanges shall be ten (10) o'clock A. M. The time within which the Debtor members shall pay their balances to the Manager, as aforesaid, shall be between the hours of eleven (11) o'clock A. M. and eleven-thirty (11.30) A. M., and the time within which Creditor members shall receive the respective balances due them, as aforesaid, so far as balances due from Debtor members have been duly paid, as aforesaid, shall be between the hours of eleven-thirty (11.30) o'clock, A. M. and eleven-forty-five (11.45) A. M.

SEC. 14. All checks or vouchers received by any member in the exchanges of any day shall remain the property of the members who presented the same respectively at the Clearing House, and shall be held in trust only, by the member so receiving the same, until returned or the amount thereof actually paid, either to the Clearing House or to the member who presented the same as aforesaid. Should any member of the Association fail to pay to the Clearing House at the proper hour the balance against it, said defaulting member shall return to the Clearing House before one (1) o'clock P. M. (except on Saturdays, on which days

the hour shall be twelve (12) o'clock, noon) without mutilation, all checks or vouchers received by it in the exchanges of that day and all such checks or vouchers shall remain the property of members presenting the same at the Clearing House, and held in trust only, until they are returned, or the amount of same actually paid to the member of whom they were received, whereupon the other members shall, immediately upon notice, return to the Clearing House all the checks or vouchers which said defaulting member may have presented to them in the exchanges of that day, or pay the amount of same to the Clearing House, and the Manager shall adjust the settlement of balances accordingly.

SEC. 15. Should a member defaulting in the payment of balance due the Clearing House refuse to return the checks and vouchers, received by such member as provided in Section fourteen (14) of these Articles of Association, then in that case the amount due from such defaulting member shall be immediately furnished to the Clearing House by the several members exchanging at that establishment with the defaulting member, in proportion to their respective balances against that member, resulting from the exchanges of the day, and the Manager shall make requisitions accordingly so that the general settlement may be accomplished with as little delay as possible. The respective amounts so furnished the Clearing House on account of the defaulting member shall constitute claims on the part of the several responding members, against that member, but as before stated the Association shall in no wise be responsible therefor.

SEC. 16. Errors in exchanges, and claims arising from the return of checks, or from any other cause, are to be adjusted directly between the members who are parties to them if either member so desire; and if any member on demand fail to immediately reimburse any other member for any such errors or claims of any kind arising out of the clearings of that day the member making such demand shall at once notify the Manager of the Clearing House, who shall delay the settlements and request the Clearing

House Committee to adjust the matter, and a settlement of the clearings shall be made under its direction.

All items amounting to \$500 or over returned for irregular endorsements only, shall be certified in the usual manner before being returned.

SEC. 17. Except on Saturdays, all items in morning exchanges found not good, lacking endorsement or otherwise irregular, are to be returned direct to the members before 2.30 o'clock P. M. On Saturdays such items shall be so returned direct to the members before 1 o'clock P. M.

SEC. 18. The expenses of the Clearing House shall be borne and paid as follows: Each member shall be assessed annually Four Hundred Dollars (\$400.00), and the balance necessary after that *pro rata* according to their daily average of the exchanges sent to the Clearing House for the months of October, November and December, immediately preceding.

SEC. 19. *a.* All payments to the Chicago Clearing House by the different members of said Association shall be made in United States Gold Coin or United States Treasury Certificates therefor, payable in Chicago; in United States Legal-Tender Notes, or Treasury Notes, or United States Treasury Certificates, therefor, payable in Chicago; in United States Gold or Silver Certificates, or National Bank Notes.

b. All gold paid to the Clearing House in settlement of balances, shall be put up in strong canvas bags, each containing \$5,000, all coins contained in any one bag to be full weight and of one denomination, the bags to be securely fastened with a lead seal (bearing the name and Clearing House number of the member putting up such package), in such manner that in the opinion of the Manager of the Clearing House, the fastenings cannot be sufficiently released to allow of the removal of any of the contents without mutilating the seal. Every such package shall have a suitable label or tag attached, bearing the name of the sealing member, the amount of the contents, denomination, date of sealing, and signature of the person or persons duly authorized to date or seal the same.

c. All currency, other than coin, paid to the Clearing House in settlement of balances, except notes of the denomination of \$50 or larger, shall be put up in packages each containing \$5,000 or \$10,000. All the notes included in any one package shall be of one denomination, enclosed in bands in multiples of five hundred dollars each; the denomination and amount shall be plainly marked on the cover of the package with the name of the member of the Association putting up the same, date of sealing and signature of person or persons duly authorized to date or seal the same. Every such package shall be enclosed between cardboards of the full width and length of the notes, placed on the upper and lower sides thereof, and shall be tied with twine and securely sealed with wax seals (bearing the imprint of the member putting up the same) in such manner that in the opinion of the Manager of the Clearing House the fastenings cannot be sufficiently released to allow of the removal of any of the contents without mutilating the seal. All notes included in any such package shall be in good condition and fit for circulation and of the denomination of either \$5, \$10 or \$20.

d. For each and every violation of any of the regulations contained in paragraphs "b" and "c" of this Section, the Manager of the Clearing House shall impose a fine of \$5 on the offending member.

e. The value of every package of gold or other currency put up in accordance with the provisions of this section shall be guaranteed by the member whose seal it bears until and including the 15th day of March, June, September, or December, whichever month shall come next after its authorized date or redate, and in case of any shortage either in count or weight, the member putting up the same shall on demand immediately make good any such shortage to the member breaking the seal. This guarantee shall not extend to any package which shall have passed into the hands of any person or corporation not a member of this Association.

Sec. 20. Each member of this Association shall furnish the Manager, as often as five times yearly, a sworn state-

ment of its condition, at such times as may be designated by the Comptroller of the Currency for statements from National Banks and at such other times and of such dates as the Clearing House Committee may require. Said statements shall be made in the form and manner prescribed by the Clearing House Committee. Said statements shall be open to the inspection of members of this Association, but otherwise shall be held strictly confidential.

SEC. 21. All checks and other items presented for payment through the Clearing House exchanges only shall be stamped, in lieu of written endorsements, by the bank presenting the same, with the words: "Paid through the Chicago Clearing House to (name of member to be here inserted)," with the date thereon; and the bank using such stamp thereby makes itself responsible for all items so stamped by it, the same as if its endorsement had been written thereon. Members of the Clearing House Association presenting checks and other items stamped for them and in their name by their customers or by other banks or bankers not members of this Association shall assume the same responsibility for all such items so stamped as they do for checks and other items stamped by themselves.

SEC. 22. Any member of this Association may clear for any bank or bankers in the city of Chicago or vicinity — not members of this Association — after obtaining the consent of the Clearing House Committee, and being obligated to pay this Association annually the sum of \$250 for each of such banks or banking firms having a capital exceeding \$50,000, and the sum of \$150 for each of those having a capital of \$25,000 to \$50,000. Such bankers or banking firms shall consent under proper authority to the same examinations, and render the same statements of their condition as are required of the members of this Association under Sections 11 and 20 of the Articles of Association, and shall be subject to all such rules and regulations in matters of common interest arising from, or affecting relations with banks in other localities, and the fostering of sound and conservative methods of banking, as have been or may from time to time be adopted by this Association under Section

2 of its Articles of Association, and shall sign an agreement so to do in such form as the Clearing House Committee may require. The Clearing House Committee shall satisfy itself that all non-members for whom members clear are *bonâ fide* engaged in the business of banking, and have a capital employed in such business of not less than \$25,000. Individuals, firms or corporations engaged in other lines of business, receiving deposits from their employees or others which they use in their regular business shall not be construed as coming within the meaning of banks, bankers or banking firms. This amendment to go into effect on January 1, 1902.

SEC. 23. The business hours of the different members of this Association shall be uniform, to be regulated from time to time, as occasion may require, by a three-fourths vote at any regular or special meeting of the Association, a quorum being present.

SEC. 24. The Clearing House Association shall have power to establish rules and regulations regarding collections of members of the Association, or of Banks or Trust Companies or others clearing through such members, and the rates to be charged for such collections and also to provide for the enforcement of the same. It may from time to time make any additions to, or changes in, such rules and regulations as it deems judicious. Any such rule or regulation must be presented by the Clearing House Committee and receive a two-thirds vote of all the members of the Association, and when once established it shall not be altered or rescinded until it has been in force at least three months, and then only by a majority vote of the members of the Clearing House Association.

SEC. 25. These Articles of Association may be amended at any meeting of the Association by a vote of three-fourths of all the members thereof, notice of the proposed amendment having been given at a previous meeting at least one week before.

SEC. 26. These Articles of Association shall go into operation on the first day of July, 1901, provided that two-thirds of the members of the present Chicago Clearing

House Association shall have assented to said articles through action of their several Boards of Directors and have filed with the Manager of the present Association a certificate by the proper officer under official seal setting forth the assent of said members. The officers now serving the Chicago Clearing House Association, with the exception of its directors, shall hold their offices under this instrument until the time hereinbefore named for the annual meeting, when a new election shall take place.

Sec. 27. These Articles of Association shall be entered in a book of record (to be kept at the Clearing House) and shall be signed by the Presidents of the respective banks, or by such other officer as may be specially appointed for that purpose by any of the banks, and by such assent the respective banks which thereby become members of the Association shall, and do hereby agree to conform in all respects to the requirements of the several sections of these Articles of Association.

RULES AND REGULATIONS.

1st. The order of business at the meetings of the Association shall be as follows:

- a. Calling the Roll.
- b. Reading the minutes of the last regular and subsequent special meetings.
- c. Considering communications to the Association.
- d. Reports of Officers of the Association.
- e. Reports of Committees.
- f. Unfinished business.
- g. Original resolutions and new business.

SCALE OF FINES.

2d. All errors in settling Clerk's statement, not reported to the Manager within twenty minutes from the time of beginning, whether of footing or entry \$2.00

3d. All other errors; each \$2.00

For all errors remaining undiscovered at the expiration of one hour from commencing, the fines will be doubled, and at the expiration of one and a half hours the fines will be quadrupled.

4th. Disorderly conduct of clerk or messenger at the Clearing House, or disregard of the Manager's instructions; each offence 2.00

5th. Any member failing to be properly represented punctually at the morning exchanges:

For the first five minutes or part thereof . . . 3.00

From five to ten minutes late 10.00

Over ten minutes late 25.00

6th. Debtor members failing to pay their balances by the hour fixed for that purpose in the Articles of Association;

For the first five minutes or part thereof . . 3.00

From five to fifteen minutes late 10.00

Over fifteen minutes late 25.00

7th. Creditor members failing to attend for their balances by the hour fixed for that purpose in the Articles of Association 3.00

8th. Balances remaining at the Clearing House after the hour fixed by the Articles of Association shall be held by the Manager at the risk of the members who have failed to call for them.

9th. The work for clearing shall not be delayed longer than fifteen (15) minutes after the hours fixed for that purpose in the Articles of Association on account of the failure of any member to be represented by that time.

10th. Clerks will be required to conduct themselves in a quiet and orderly manner, to be attentive to their duties, and to remain at their desks while the proof is being made and until it is announced. Loud communications, unnecessary conversation, or anything tending to create disturbance or confusion, will not be permitted.

11th. All fines shall be collected by the Manager at once.

12th. Any errors in the exchanges discovered by any member after clearings have been made, whether of debit

or credit, shall be *immediately* reported to the member in whose exchanges the error is discovered.

13th. Members shall pay all differences or claims of ten dollars or over by cashier's check or Clearing House memorandum, signed by a duly authorized officer of the bank, unless payment in cash is demanded by an officer of the bank making the claim.

14th. The Manager shall require from members the signatures of such persons as are authorized to receipt for balances.

RESOLUTIONS

ADOPTED DEC. 13, 1901.

"For the purpose of establishing among the members of this association a uniform method of computing interest on the balances of out of town banks:

"*Resolved*, That from and after December 1, 1901, interest shall be computed on balances at the close of each day's business less such of the credits for the day as are not available for that day's clearings."

ADOPTED JAN. 21, 1903.

The business hours of the members of this association shall be from ten (10) A. M. to three (3) P. M., except on Saturdays, on which day the hours shall be from nine (9) A. M. to twelve (12) noon.

Nothing herein contained shall apply to the savings departments or trust departments of the members of this association.

ADOPTED JAN. 19, 1904.

"*Resolved*, That all banks, members of this association, shall stamp or write in plain letters the word 'counterfeit,' 'altered' or 'worthless' upon all fraudulent notes issued in the form of, and intended to circulate as money, which shall be presented at their places of business; and if such officers

shall wrongly stamp any genuine note of the United States or of the National Banks, they shall upon presentation redeem such notes at the face value thereof."

[REVISED JAN. 19, 1904.]

MEMBERSHIP

JAN., 1904.

- | | |
|-----------------------------------|------------------------------------|
| 1. First National Bank, | 13. National Bank of the Republic, |
| 3. Commercial National Bank, | 14. Bankers National Bank, |
| 4. Merchants Loan & Trust Com- | 15. Northern Trust Company, |
| pany, | 16. Illinois Trust & Savings Bank, |
| 5. Corn Exchange National Bank, | 17. American Trust & Savings |
| 7. Hibernian Banking Association, | Bank, |
| 8. Bank of Montreal, | 18. State Bank of Chicago, |
| 9. Union Trust Company, | 19. National Bank of North Amer- |
| 10. Chicago National Bank, | ica, |
| 11. Continental National Bank, | 20. Assistant Treasurer U. S. at |
| 12. Fort Dearborn National Bank, | Chicago. |

OFFICERS.

President, BYRON L. SMITH, President Northern Trust Company.

Vice-President, GEO. M. REYNOLDS, Vice-President Continental National Bank.

Manager, W. D. C. STREET.

CLEARING HOUSE COMMITTEE.

JAS. B. FORGAN, *Chairman*, President First National Bank.

ORSON SMITH, President Merchants Loan & Trust Co.

ERNEST A. HAMILL, President Corn Exchange National Bank.

JOHN J. MITCHELL, President Illinois Trust & Savings Bank.

JAS. H. ECKELS, President Commercial National Bank.

APPENDIX E

LATE DECISIONS.

Page 86, § 5198. A note given in renewal of a note tainted with usury is itself tainted with usury. *First National Bank of Rapid City v. McCarthy* (S. Dak.), 100 N. W. 14.

Page 113, § 5209. A conspiracy to violate this section is indictable under Rev. Stat. § 5440 as an offence against the United States. *Scott v. United States*, 130 Fed. 429.

Sec. 5151. To the cases on the last paragraph on p. 47, add *Rankin v. Barton* (Kans.), 77 Pac. 531.

Page 180, § 5242. This absolutely bars an injunction by a state court against a national bank. *Meyer v. First Nat. Bank of Cœur d'Alene* (Idaho), 77 Pac. 334.

CLEARING-HOUSES. — A custom of banks sending notes through a clearing-house, by which a time is fixed within business hours when the conditional payment of a note by its having gone through the clearing-house becomes absolute if the note is not returned, is valid and binding on such banks. *Atlas Nat. Bank v. National Exchange Bank*, 176 Mass. 300; 178 Id. 531.

The following statutes are also of interest: —

[**TAXES ON INSOLVENT NATIONAL BANKS REMITTED.**]
— The act of March 1, 1879, provides "that whenever and after any bank has ceased to do business by reason of insolvency or bankruptcy no tax shall be assessed or collected, or paid into the Treasury of the United States, on account of such bank, which shall diminish the assets thereof necessary for the full payment of all its depositors; and such tax shall be abated from such national banks as are found by the Comptroller of the Currency to

be insolvent; and the Commissioner of Internal Revenue, when the facts shall so appear to him, is authorized to remit so much of said tax against insolvent State and savings banks as shall be found to affect the claims of their depositors." (See p. 122.)

Sec. 629. [JURISDICTION OF CIRCUIT COURTS TO ENJOIN COMPTROLLER.] — "The circuit courts shall have original jurisdiction of all suits brought by any banking association established in the district for which the court is held, under the provisions of Title 'The National Banks,' to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said Title." (See p. 170.)

INDICES

INDEX TO CLEARING HOUSE RULES

[References are to pages.]

A.

Admission	204, 226, 247
Admissions, Committee on	204
Adoption of Constitution	210, 237, 256
Amendments	210, 237, 256
Annual meeting	196, 228, 249
Arbitration Committee	206, 230, 250
Assistant Treasurer U. S., regulations affecting relations with	219, 226, 245, 247

B.

Balances ; action in case of failure to pay	199, 232, 252
how packages in payment of, should be made up	213,
reclamation for errors in	233, 238, 253
responsibility for loss in	200, 233, 252
sections relating to	195, 227, 228, 247
time of settlement	199-201, 227-233, 247-253
Bonds of manager and clerks	199, 231, 251
	198, 231, 248

C.

Certificates, gold depository	203
(See Depository.)	
Chairman of association ; title changed to President	211
Change of name of member	226, 246
Charges for collection (see Collection charges).	
Checks and items in exchanges (see Exchanges).	
Claims for errors in balances and exchanges	200, 233, 253
gold depository	223
Clearings (see Exchanges).	
Clearing for non-members	206-209, 235, 236, 255
Clearing House Committee, election of ; powers and duties .	197,
	229, 249

266 INDEX TO CLEARING HOUSE RULES

Clearing House Committee, may examine bank members	197, 230, 250
may establish rules in regard to collections outside	197, 228, 236, 239, 240
may readjust the proof sheet	201
may remove manager and clerks	198, 230, 250
may store gold coin and issue certificates	203
may suspend member	205, 211, 230, 250
other powers and duties in connection with non-members	206-209
scale of fines	230, 251
Collection charges, amendment authorizing	197
rules, regulations, and charges	215, 218, 240-244, 256
Committees, composition of	211, 228, 249
vacancies, how filled	211, 230, 250
for various committees (<i>see</i> Admissions, Committee on; Arbitration Committee; Clearing House Committee; Conference Committee; Nominating Committee).	
Coin depository (<i>see</i> Depository).	
Conference Committee, duties, etc.	205

D.

Defaulting bank	199, 232, 234, 252
Depository, for coin, etc.	202
fine for parting with certificates of	203
rules relating to	223

E.

Election, annual	196, 228, 249
Clearing House Committee	197, 228, 249
Committee on Admissions (appointed)	204
Committee of Arbitration (appointed)	206
Conference Committee	205
Nominating Committee	210, 228
of officers by ballot	196, 228, 249
Endorsements, when qualified, must be guaranteed	201, 233, 243, 255
Errors at clearing house, fines for (<i>see</i> Fines). in exchanges (<i>see</i> Exchanges).	
Exchange on out-of-town items (<i>see</i> Collection charges).	
Exchanges, sections relating to	198-201, 231, 232, 251-253
fines for mis-sent items in	214, 240

INDEX TO CLEARING HOUSE RULES 267

Exchanges, rules in regard to items in	213, 234, 253
Expenses of association, how provided for	205, 236, 253
Expulsion, provision for	205, 227, 250

F.

Failure to pay balances, action in case of	199, 232, 252
Fees, initiation	203, 226, 247
non-members	203, 236, 255
Fines for absence from meetings	196, 228, 249
errors at Clearing House	213, 239, 258
mis-sent items	213, 240
parting with depository certificates	203
violation of rules governing collection charges	217, 242, 258
tardiness and disorderly conduct	214, 239, 258

G.

Gold depository (*see* Depository).

I.

Indorsements (*see* Endorsements).

Initiation fees	203, 226, 247
Interpretations of collection charge rules	218, 243, 244

L.

Liability for non-members (*see* Non-Members).

Loss in balances	195, 227, 228, 247
in coin depository, how borne	203

M.

Manager, powers and duties	198, 230, 231, 248
Meetings, annual and special	196, 228, 249
fines for non-attendance at	196, 228, 249
quorum at	196, 229, 249
Members; how admitted	203, 226, 248
initiation fees	203, 226, 247
original	195
present	212, 226, 260
Membership, applications for (<i>see</i> Committee on Admissions).	
Mis-sent items, fine for	214, 240
return of	200

268 INDEX TO CLEARING HOUSE RULES

N.

Name of association	195, 225, 246
Nominating Committee	210, 228
Non-members,	
provisions relating to	206-209, 235, 236, 255
weekly statements	221

O.

Objects of the association	195, 225, 246
Out-of-town collections (<i>see</i> Collection charges).	
Officers	196-198, 228-231, 248-250

P.

Powers of Clearing House Committee	197, 198, 229, 249
manager	198, 230, 231, 248
President of association <i>ex-officio</i> a member of Committees	211
title changed from "chairman"	211
when and how elected	196, 228, 229, 248, 249

Q.

Qualifications for membership	204, 226, 247
Quorum, at all meetings	196, 229, 249

R.

Receipt on items in exchanges, form of	199, 233, 255
Reclamations for errors	200, 233, 252
Responsibility for loss in exchanges and balances	195, 227, 228, 247
Requisition in case of failure to pay balances	199, 232, 252
Rules and regulations of the coin depository	223
regarding collections, etc.	212, 215, 218, 240-244, 256
Rulings on collection charges and regulations	218, 244

S.

Secretary of Association, when and how elected	196, 228, 229
Special meetings	196, 229, 249
Stamp required by Assistant Treasurer as final endorsement	
on checks	220
Statements, weekly: form for Clearing House banks	201
form for non-members	228

INDEX TO CLEARING HOUSE RULES 269

Sub-treasury (*see* Assistant Treasurer).

Suspension of Clearing House member 205, 280, 250

T.

Trust companies, as non-members, provisions relating to
(*see* Non-Members).

rules relating to 208, 222

U.

United States sub-treasury (*see* Assistant Treasurer).

W.

Weekly statements (*see* Statements).

Withdrawal from association 205, 226, 247

GENERAL INDEX

[References are to pages.]

A.

Acknowledgments	17, 115, 116
Act of Feb. 25, 1863, banks under	55
Advertisements (<i>see</i> Publication).	
imitation of circulation in	72
Agent, shareholders'	142
special to examine bank failing to redeem notes	151
Albany, reserve city	73, 79, 81
Alaska	2
Amendments to articles of association	2
restriction of	28
American Bankers' Association	185-194
Appraisal of shares	4
Articles of association, amendment of	2
restriction in amendment	28
converted State bank, of	52
increase of capital stock	33
proceedings in regard to, and form of	1
provisions for election, when not provided for in	40
reduction of capital stock	36
Assessments for impairment of capital	98
redemption of circulation, etc.	76
refunding to bank	122
(<i>See</i> Reports; Shares; Taxation.)	
Assessors, shareholders' lists accessible to	113
Assets of failed bank turned over to agent	143
insolvent banks, distribution of	167
of consolidated banks	143
receiver to collect and sell	154
reports of condition to state	115
(<i>See</i> Lien.)	
Assignment of assets after insolvency	175
Association defined	58
Attachment	175

B.

Bad debts (<i>see</i> Debts).	
Ballot (<i>see</i> Elections; Shareholders).	
Baltimore, reserve city	73, 79, 81
Bank circulation (<i>see</i> Circulation).	
Bank examiners	173
Banking powers	17
Bills and notes, may discount	81
illegal transfer void	175
interest	81
mutilation of	72
official malfeasance as to	101
restrictions on loans	94
restrictions on association's liability	96
Board of Directors (<i>see</i> Directors).	
Bonds of officers	18
public depositaries	51
receivers	154
shareholders' agent	142
Bonds, United States, annual examination	
assignment	58
cancellation of	152
coupon exchanged for registered	57
defined	56
deposit of, by banks	56
by depositaries	51
by gold banks	70
examination	59
forfeiture of	151
general provisions	60
increase of deposit	57
interest on	57
liable for penalty	117, 120
withheld for impaired capital	98
liquidating banks	148
minimum	56
notice of transfer	59
relation of deposit to capital	57
return to association	55
sale	149, 152, 153
taxation	124
transfer	58
trust by U. S. Treasurer	58

Bonds, withdrawal of	57, 78
Books (<i>see</i> Comptroller; Treasurer United States).	
Boston, reserve city	73, 79, 81
Clearing House Rules	225-245
Branch banks	55
Business, when begin	32
place of	16, 35, 73
suspension of	151
By-laws	18

C.

Capital stock, assets to be distributed	143
allotment of	4
amount to be paid before business	32
assessment on, for impairment	98
certificate as to payment, etc.	16, 32, 61
circulation, note to be used to correct	97
free from taxation	122
proportion to	57
converted banks	52, 53
forfeiture of	32
impairment, ground for receiver	98
increase	33-36
liabilities not to exceed	96
loans on security of, prohibited	94
restricted to 10 per cent of	93
minimum	28
not to hold own	52, 94
payment of	32
personal property	23
reduction	36
restoration, when below minimum	32
rights in voting	37, 140, 142, 158
sale of, of delinquent shareholders	4, 32, 94, 144
shareholders, list of	113
owning two-thirds of, may place in liquidation	140
may extend corporate existence	2
entitled to one vote for each share	37
shares of and transfer	23
amount and number	16, 28, 52
acquired for debt	94
State banks converted	54
State taxation	122

Capital stock, subscriptions to	32
surplus	92
value of	4
(See Dividends; Receiver; Shareholders).	
Cashier, appointment	17
bond assignments by	58
certificate to commence business	62
certificate of stock payment	32
circulating notes, to sign	64
embezzlement by	101
examination of	178
examiner of own bank cannot be	178
false certification of checks	101
protest of circulation, notice waived	150
proxy, not to act as	37
reports verified by	115, 116
shareholders' lists by	118
sign circulation	65, 68
taxable circulation, return by	120
(See President; Officers.)	
Certificate, Comptroller's of authority	62, 68
converted State banks	52
destruction of notes	69
extension of corporate existence	8
increase of stock	33
officers and directors	62
organization	16, 17
payment of stock	32
reduction of stock	36
voluntary liquidation	146
Certification of checks	10, 101
Charleston, reserve city	79
Charter, forfeiture of	170
Chicago, reserve city	73, 79, 81
Clearing House Rules	246-280
Cincinnati, reserve city	73, 79, 81
Circulation, amount of, obtainable	7, 70
association may issue	17
associations consolidating, deposit of lawful money to retire, unnecessary	148
associations to redeem, in lawful money on demand	81
bonds forfeited when, dishonored	151
bonds, United States, to secure	56
certificates of destruction, by whom executed	69

Circulation, charter number on	79
consolidating banks	148
cost of engraved plates to be paid by association	6, 77
counterfeiting, etc.	71
countersigning unlawfully	71
deposit of United States bonds to secure	56
destroyed, to be replaced by an equal amount of new notes	77
expenses of redemption, how paid	6, 77
extended bank, shall differ from prior issues	6
for what, is receivable	67
fraudulent notes to be so stamped	69, 144
gold bank, to be redeemed in gold coin	70
government depositories to receive, at par	51
inscription on	64, 70
increasing capital stock, use of, prohibited	97
limit on aggregate amount of	7
liquidating bank to deposit lawful money to redeem	148
notice of redemption of, to be forwarded to bank	77
other, prohibited for national bank	69
penalty for failure to make return of taxable	120
pledging, as security prohibited	97
preparation of	5, 64
profit on unredeemed, inures to the United States	5
proceedings when return is not made	119
prohibition against circulating uncurrent notes	100
proportion to bonds deposited	8
to capital	58
protest of	150
receivable at par by all national banks	81
redeemed, to be cancelled	158
redemption fund of 5 per cent	76
redemption of, in United States notes	77
extended bank	5
liquidating banks	149
incomplete	68
refunding excess tax	122
restriction of tax provisions	120
semiannual return of, subject to tax	119, 120
tax on	117, 118, 120, 122
when issuable as money	67
withdrawal of, by depositing lawful money	77
worn out or mutilated, destroyed	69
Citizenship of banks	4
Claims (<i>see</i> Insolvency; Receiver).	

Clearing House certificates as reserve	119
rules	195-280
(See Index to Clearing House Rules.)	
Clerks of banks not proxies	87
Cleveland, reserve city	73, 79, 81
Coin (see Gold; Silver).	
Commercial paper (see Bills).	
Comptroller of the Currency approve receiver's purchase	165
approve reserve agent	75
bonds and records, access to	59
bonds, sale of, by	153
capital stock, approval	33, 36
enforce stockholder liability	41
enjoined by bank	169
forfeiture of charter, suit by	171
reports to	115, 116
(See Receivers; Insolvent banks.)	
Consolidation of national banks	148
Converted State banks (see State banks converted).	
Corporate existence	2, 10, 170
Corporate powers (see Powers).	
Corporation, association becomes	17
Cost (see Expenses).	
Counterfeit notes to be stamped	144
Courts (see Crimes; Jurisdiction).	
Creditor's bill against shareholders	141
Creditor's rights not impaired	175
notice to, of insolvency	162
of nonpayment of, circulation	152
notice of voluntary liquidation	146
preferred	175
shareholders' list, inspection by	113
Crimes as to circulation	71-73, 100
false certification of checks	10, 101
jurisdiction	4, 166
official malfeasance	10, 101
receivers	166
Currency (see Gold; Silver; Lawful money).	

D.

Debts, compounding of	154
bad, defined	97
real estate held for	26

Deficiency (<i>see</i> Bonds; Capital; Receiver; Reserve)	
Denominations of circulation of gold banks	70
national banks	28, 52, 64
converted State banks	52
gold certificates	9
United States note certificates	80
Deposit of United States bonds (<i>see</i> Bonds, United States).	
Depositories (<i>see</i> Government depositories).	
Deposits, reserve to be kept on	73-81
Depreciation (<i>see</i> Bonds; Circulation).	
Destruction of mutilated notes	69
Detroit, reserve city	73, 79, 81
Dies (<i>see</i> Plates and dies).	
Directors, certificates by	3, 62
conversion of State bank by	52
dividends, declaration of, by	92
election and number	18, 37, 40
enforcing payment of capital	38
forfeiture of charter for violation by	171
liability of	171
names and residences	61
not to examine own bank	173
oath of	39
official malfeasance, penalty	101
president to be a	41
powers	18
proxy not to be a	37
qualifications	38
vacancies	40
Discount (<i>see</i> Loans; Interest).	
Dissenting shareholders may withdraw	135
Dissolution (<i>see</i> Forfeiture; Insolvency; Liquidation; Receivers).	
Dividends, of insolvent banks	167
directors may declare	92
to be reported	116, 117
restriction	96, 97
(<i>See</i> Surplus.)	
Drafts (<i>see</i> Bills).	
Dues (<i>see</i> Tax; Duties).	
Duties of associations under the Act of Feb. 25, 1863	55
custom	9, 67
directors'	37, 40
examiners'	173
public depositories'	51

Duties, receivers'	154
shareholders' agent	142, 143, 150-162
(See Tax.)	

E.

Earnings (<i>see</i> Dividends).	
Elections	18, 40
qualifications	37, 38
shareholders' agent	141
Embezzlement (<i>see</i> Crimes).	
Employees (<i>see</i> Clerks).	
Engraving (<i>see</i> Circulation; Plates).	
Equity, bill in	141
Examination of organization proceedings	61
bonds and records	59
examiners to make	173
limitation	174
list of shareholders	113
plates and dies	65
special, of extended associations	3
shares of dissenting stockholders	4
Examiners	173
special commission	62
Execution (<i>see</i> Suits).	
Executor (<i>see</i> Trustee).	
Existence	2, 10, 17
Expenses of circulation	7, 76-78
of examinations	3, 4, 65, 173
plates and dies	65
receivership	141, 170
sale of bonds	149, 152
sale of delinquent stock	32

F.

Failure (<i>see</i> Insolvency).	
False entry	101
Fees (<i>see</i> Examiners; Receivers).	
Fine (<i>see</i> Penalty).	
Five per cent fund	76, 77
Foreign corporation	4
Forfeiture of charter	171
(See Bonds; Usury.)	

Forgery (<i>see Crimes</i>).	
Franchise (<i>see Powers</i>).	
Fraudulent notes to be marked	69, 144

G.

Gold certificates and reserve	9
taxation of	64
Gold banks	70
conversion of	64
reserve	71, 81
tax on circulation	117
Government depositaries	51
Guardian (<i>see Trustee</i>).	

I.

Imports, circulation not receivable for	67
Improper use of circulation	97, 100
Injunction (<i>see Comptroller; Suits</i>).	
Insolvency, distribution of assets	167
general jurisdiction	4
impairment of capital	98
notice to creditors	162
preference of creditors	175
receivers	154
shareholders' agent	142, 158
taxes	261
(<i>See Receivers.</i>)	
Interest, rate of (<i>see Usury</i>).	
on public debt	67
Internal Revenue, Commissioner of, returns to	119

J.

Judgment (<i>see Suits</i>).	
Jurisdiction	4, 84, 166, 262

L.

Larceny (<i>see Crimes</i>).	
Lawful money defined	68, 71
exemption from taxation	122
deposit of	5, 7, 76, 146, 148

Lawful five per cent fund	76, 77
redemption of circulation in	150-152
reserve to be	9, 71, 73, 76, 80, 81
Legal tender defined	68
Liability of association for pledging	100
converted State bank for old notes	120
directors'	171
estates owning stock	49
limitation of	96
shareholders'	41
debars from voting	37
agent	141
Liabilities of associations under the Act of Feb. 25, 1863	55
change of title, etc. does not affect	36
converted State banks	120
deficiency in reserve, not to be increased when	73
deposit relieves from	148
duties of receiver as to	154
duties of shareholders' agent	142, 158
extended associations	4
limitation	96
liquidating associations	148
loans	93
reports to show	115
Lien, illegal preference	175
interest on bonds	117, 121
United States, paramount	152
Limitations,	
bonds, deposit	56
withdrawal	60, 76
capital stock	33-36, 52
circulation, amount of	7, 57, 70
denominations	64, 66
tax on	122
corporate existence	2-10, 17
directors	37, 38
dividends	93, 97
gold certificates	9
injunction against comptroller or receiver	169
inspection of list of shareholders	113
interest	81
liability of bank	96
loans	93
"National" in title	182

Limitations (<i>continued</i>),	
public depositaries	51
real estate holdings	25
receiver	164
reserve	71, 78, 79, 81
savings banks in District of Columbia	145
shareholders' liability	41
shares of stock, par value	28
State taxation	64, 122
stock, ownership	94
United States certificates	80
visitorial powers	74
voluntary liquidation	140, 145
voters	37
Liquidation, bonds, deficiency in	152
bonds, forfeiture of	151
sale of	149, 152, 153
withdrawal of	148
charter, forfeiture	171
consolidation	148
creditor's bill against shareholders	141
deposit of lawful money	146, 148
distribution of assets	167
illegal preferences	175
injunction	169, 170
jurisdiction	4, 262
notice	146, 152, 162
receiver, appointment of	154
redemption of circulation	149
shareholders' agent	142, 158
suspension of business	151
taxes remitted	261
vote required	140
(<i>See Receivers.</i>)	
Loans	25, 94-97
Location and title	16, 85, 73
Losses	144
Louisville, reserve city	73, 79, 81

M.

Maceration	69
Maximum and minimum (<i>see Bonds; Capital; Circulation</i>).	
Milwaukee, reserve city	73, 79, 81
Misdemeanor (<i>see Crimes</i>).	

Money (*see* Lawful money; Circulation).

Mortgages, assignment	175
purchase	164
real estate	25
Mutilated circulation	69, 72

N.

"National," use of word	182
National Bank Act	1
in Oklahoma and Alaska	2
National banking associations, conversion of gold banks	54
conversion of State banks	52
Net profits (<i>see</i> Dividends).	
New Orleans, reserve city	73, 79, 81
New York City, reserve city	73, 75, 79, 81
Clearing House Rules	195-224
notice in paper in	146, 152
sale of forfeited bonds in	152
Non-residents, directors	2, 88
stock of	122
Notary public, acknowledgment	17, 115, 116
Notes (<i>see</i> Bills; Circulation; United States notes).	
Notice (<i>see</i> Publication).	
of protest, waiver	150

O.

Oath, certificate of officers	61
directors'	89
examiners may take statements under	173
payment of installments	32
reports	115, 116, 141
return of circulation	118-122
shareholders, list of	118
Officers, bonds to be signed by	58
certificates	3, 32, 33, 61, 146
circulation signed by	67, 71
disqualified as examiners	173
election of	17
examination of	173
forfeiture for violations of act	171
fraudulent notes to be marked by	69
oath to reports	116

Officers, official malfeasance	10, 71, 101
proxy, not to act as	37
receiver for violations of act	101
reports by	115-120
shareholders' list by	118
United States	69, 71
waiver of notice of protest by	150
Oklahoma	2
Organization and powers,	
articles of association	1, 28
capital stock	16, 28
certificates to begin business	61, 62
conversion of gold banks	54
of State banks	52-55
corporate powers	17
deposit of bonds	16
directors' election, etc.	37-40
execution of organization certificate	16, 17
extension of corporate existence	2
gold banks	54, 70
incidental powers	17
increase of capital stock	88-86
liquidation	140
location and title	16, 35, 36
payment of stock	82
preliminary requirements to begin business	16, 32, 61-63
president, election, etc.	41
reduction of capital stock	36
restoration of capital stock	32
shareholders and their liability	16, 41
voting qualifications	37
shares of stock	28
status of associations under the Act of Feb. 25, 1863	55
title	16, 35, 36, 182
Organization certificate	16, 17, 62
converted gold banks	54
converted State banks	52

P.

Payment of capital stock	82
Penalty for offences against circulation	71-73, 97, 100
false certification of checks	10, 101
failure to pay installment on stock	32

Penalty for failure to redeem circulation	151
forfeiture of charter	171
interest, unlawful	84
jurisdiction	4
"National," use of word	182
official malfeasance	101
reports to comptroller	117, 141
reserve, maintenance of	73
semiannual return of circulation	118-121
(See Receiver.)	
Personal liability (see Liability).	
Philadelphia and Pittsburg, reserve cities	73, 79, 81
Place of business (see Location).	
Plates, engraving and control	32, 64, 65
expenses	5, 6, 65, 76
extended banks	5, 6
Pledging circulation	97, 100
Population, relation of stock to	28
Post notes prohibited	69
Powers	17
(See Organization and powers.)	
President, director to be	41
circulation, signed by	65, 68
election	17
official malfeasance	10, 71, 101
proxy, not to be	37
(See Officers.)	
Protest of circulation	150-153
Proxy	37, 142, 158
Publication of notice of special annual election	40
certificate of authority to begin business	63
change of title or location	35, 36
notice to creditors of insolvent associations	162
notice to present on non-payment of circulation	152
reports of condition	115
sale of bonds	152
of delinquent stock	144
shareholders' agent, notice for election	142, 158
voluntary liquidation, notice of	146
Q.	
Qualification of directors	38
examiners	173

Qualification of receivers	154
shareholders' agent	142, 158
voters	87

R.

Real estate	25, 122
Receiver, appointment and duties	154-160
grounds for appointment	32, 73, 94, 98, 101, 141, 154, 171
courts may enjoin	169, 202
expenses	170
liability	166
purchase of property to protect trust	164
(See Liquidation.)	
Redemption	5, 6, 69, 76, 148-153
deposit of lawful money	146
enjoining Comptroller	169
five per cent fund	76, 77
incomplete or stolen notes	67, 68
profit on circulation not presented	69
State banks, converted	120
United States note certificates	80
withdrawn circulation	7, 76
Register of the Treasury, signature on circulation	64
Regulation of banking business,	
assessment	144
circulation, improper use	97
dividends and surplus	92, 97
examiners	173
impairment of capital	98
interest	81-92
laws governing	56
liability restricted	97
loans restricted	93
net profits	92
place of business	78
real estate	25
reports	115-117
reserve requirements	71-81
shareholders, list of	113
State taxation	122
stock, holding	94
uncurrent notes prohibited	110
visitorial powers limited	174

Reports, attestation	115
banks other than national	141
circulation	120
dividends and condition	115-117
failure to make	117, 120
list of shareholders	113
payment of stock	32
Reserve requirements	9, 71, 73-81
cities	73-81
Residence, shareholders	16, 97
directors	38
national banks	2
Resources (<i>see Assets</i>).	
Restoration of capital stock	32, 98
Returns (<i>see Reports</i>).	
Richmond, reserve city	79

S.

St. Louis, reserve city	73, 79, 81
Sale of assets of insolvent bank	142, 154, 158
bonds for failure to redeem circulation	148-153
stock	82, 94, 144
San Francisco, reserve city	73, 79, 81
Savings banks	144
Secretary of the Treasury, special agent	151
banks with less than \$100,000 capital approved by	28
bonds, exchange of	57, 60
circulation, destruction of	59
currency, contraction or expansion	80
plates and dies, examination	65
receivers, appointed by	73
reserve cities	75
United States certificates issued by	80
Security for circulation (<i>see Bonds</i>).	
Security for loans, personal	17
Shareholders, agent of	142, 158
assessment for impairment of capital	98, 144
assets to be divided among	143, 144, 167
consent necessary to extension	2
converted State banks	52
creditors' bill against	141
directors, election of, by	17, 37, 40
dissenting to extension may withdraw	4

Shareholders, enforcing payment by, of installments	32
estates with trustee liable to assessment	49
list of	16, 113
personal liability	41
proxies, voting by	37
transfers of shares	28
vote necessary in voluntary liquidation	140
voting	37
Shares (<i>see</i> Capital Stocks).	
Signature on circulation	64
Silver, lawful money	68, 71
certificates	9
State banks, converted	52-55
shareholders' liability	41
taxation	55, 118, 119
Stock (<i>see</i> Capital stock; Shareholders).	
Succession	4, 17
Suits by national banks	17
creditor's bill against stockholders	141
enjoining Comptroller or receiver	169
forfeiture of charter	171
illegal preference of creditors	175
jurisdiction	4, 84, 166, 262
shareholders' agent	142, 158
shareholders' liability	154
Surplus, creation of	92
converted State bank	41
	(<i>See</i> Dividends.)
Surrender of bonds (<i>see</i> Bonds).	

T.

Tax on circulation	117-122
insolvent banks	261
State taxation	64, 122-140
Teller (<i>see</i> Officers).	
Title (<i>see</i> Location).	
Transfers (<i>see</i> Bonds; Capital stock).	
Treasury, United States, as redemption agent	76, 78, 152, 153
penalty for failure to report, paid to	117, 120
Trustee, liability as shareholder	41
exemptions	49

U.

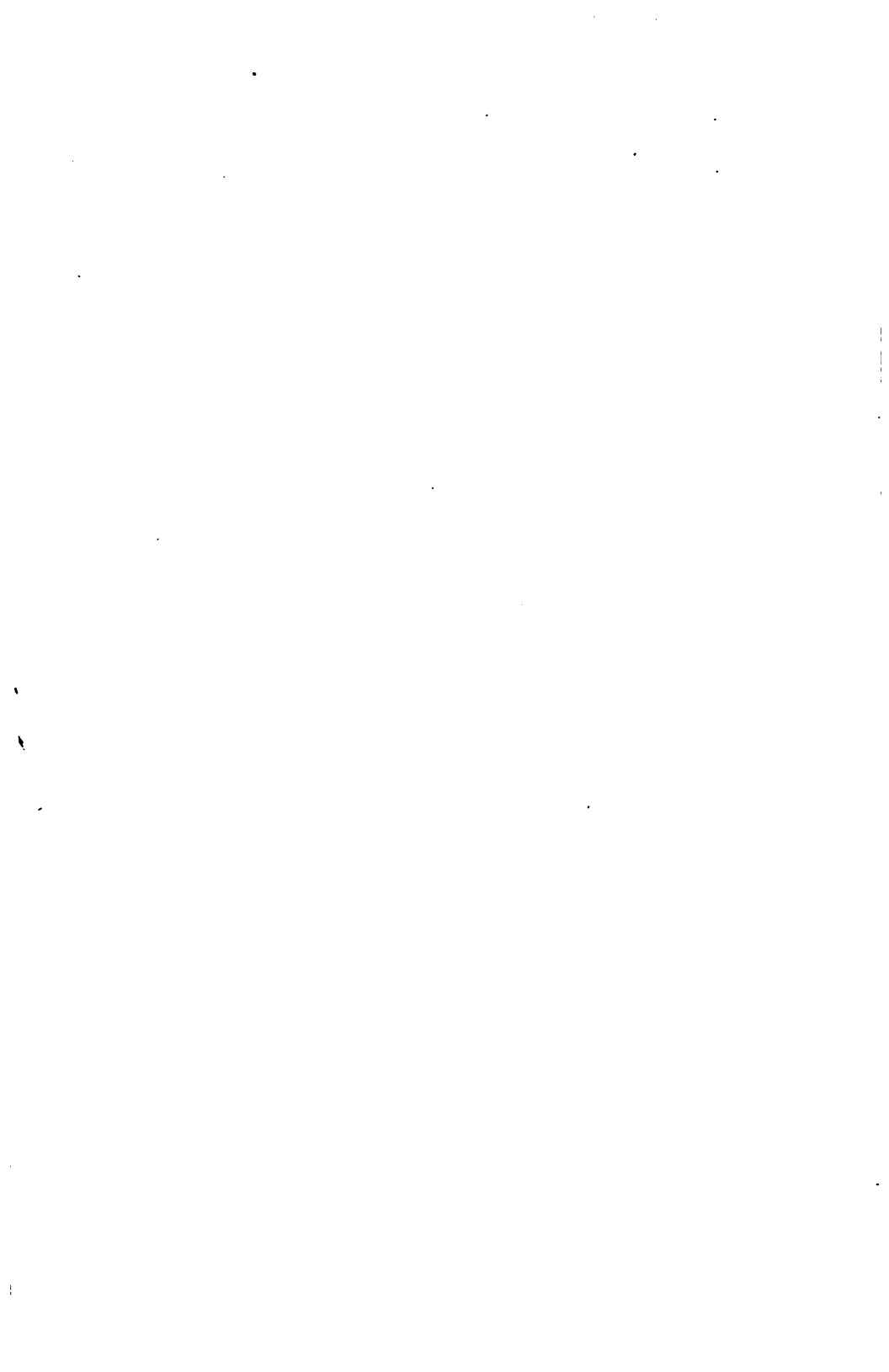
<i>Ultra vires</i>	21, 24, 25
Uncurrent notes prohibited	100
United States notes, circulation to be redeemed in	77
amount outstanding	79
fraudulent to, be marked	69
penalty for pledging	100
redemption of certificates issued for	80
taxation	64
Usury, interest not	81
penalty for	84-92

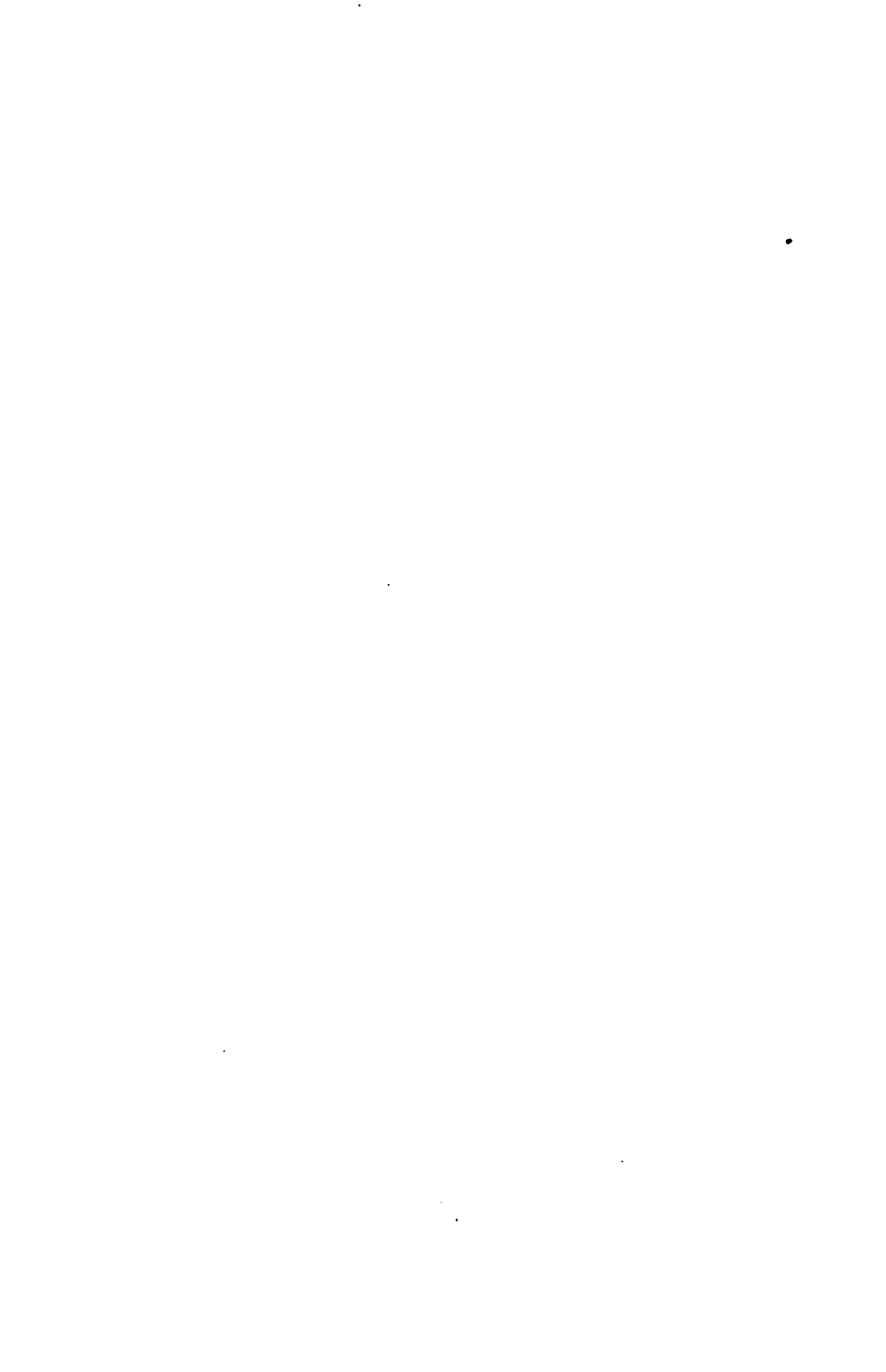
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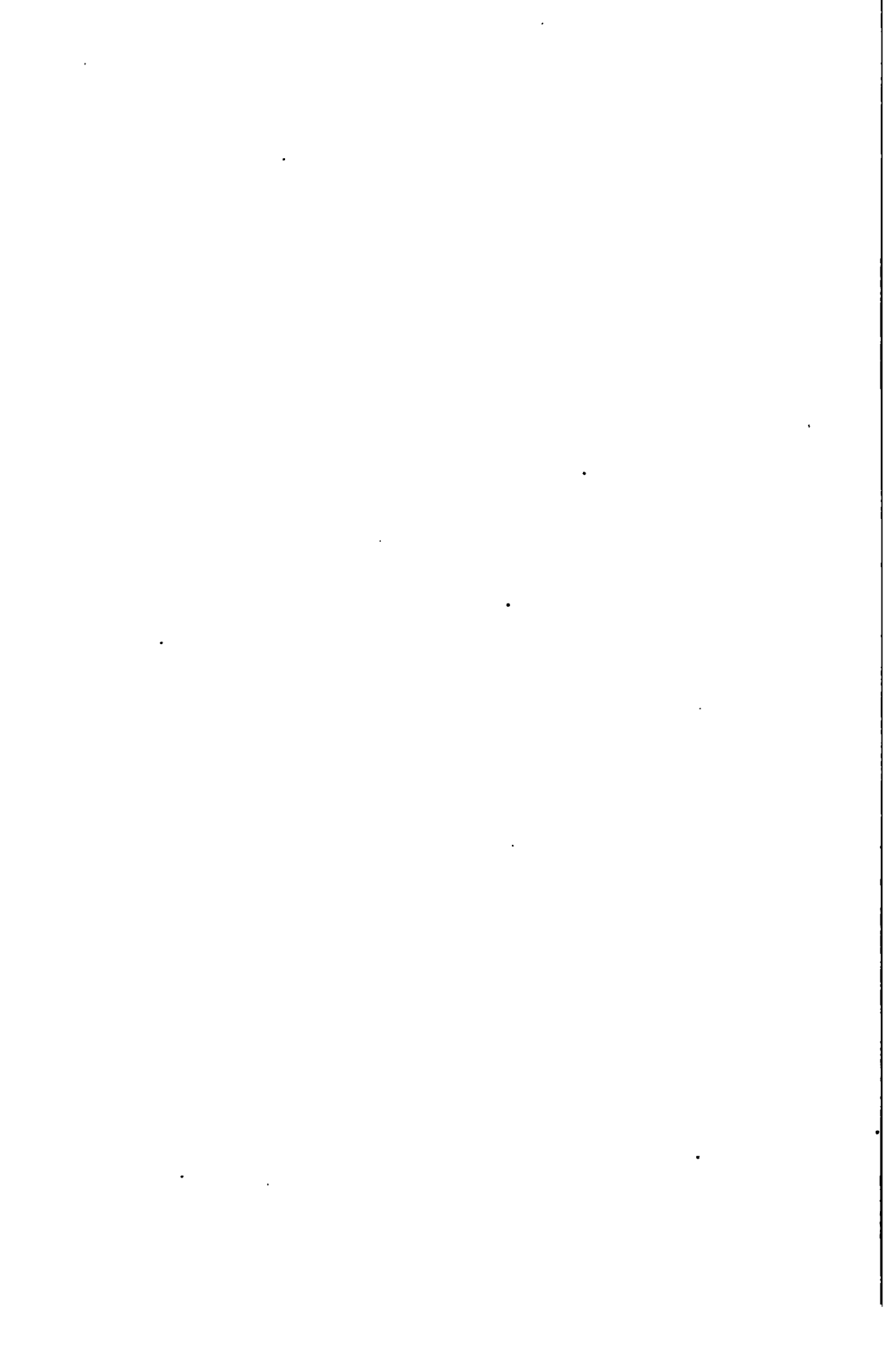
Vacancies in Board of Directors	40
Vice-president may sign transfer of bonds	58
circulation, may sign	64, 67
election	17
proxy, not to be	37
(See Officers.)	
Violation of Act	171
Visitorial powers, limitation	174
Voluntary liquidation (<i>see</i> Liquidation).	
Voters, qualification of	37, 143, 161

W.

Washington, reserve city	73, 79, 81
Withdrawal of bonds	60, 143
circulation	7, 76
dissenting shareholders	135
reduction of capital	36
unearned dividends	97







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